No. 11894

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

PRINTING SPECIALTIES AND PAPER CONVERTERS UNION, LOCAL 388, A. F. L., and WALTER J. TURNER,

Appellants,

vs.

HOWARD F. LeBARON, Regional Director of the 21st Region of the National Labor Relations Board, on Behalf of the NATIONAL LABOR RELATIONS BOARD,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States for the Southern District of California Central Division

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Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants:

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DAVID P. FINDLING
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WINTHROP A. JOHNS

DOMINICK MANOLI

GEORGE H. O'BRIEN

111 West Seventh Street, Room 704
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*Page number appearing at foot of Certified Transcript.

In the District Court of the United States for the Southern District of California

Central Division

No. 7859-M

HOWARD F. LeBARON, Regional Director of the 21st Region of the NATIONAL LABOR RELATIONS BOARD, on Behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

PRINTING SPECIALTIES AND PAPER CONVERTERS UNION, LOCAL 388, AFL, and WALTER J. TURNER,

Respondents.

PETITION FOR AN INJUNCTION UNDER SECTION 10(1) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED [2]

To the Honorable District Judge of the United States District Court for the Southern District of California, Central Division:

Comes now Howard F. LeBaron, Regional Director of the 21st Region of the National Labor Relations Board (hereinafter called the board), and petitions this Court on behalf of the Board, pursuant to Section 10(1) of the National Labor Relations Act, as amended June 23, 1947, (Public Law 101, 80th Congress, Chapter 120, 1st Session, hereinafter called the Act), for a temporary restraining order and for appropriate injunctive relief pending the final adjudication of the Board with respect to the matter pending before the Board on charges alleging that

respondents have engaged in and are engaging in violation of Section 8(b), subsection 4(A) of the Act. In support thereof, Petitioner respectfully shows as follows:

1. Petitioner is Regional Director of the 21st Region of the Board, an agency of the United States Government, and files this petition on behalf of the Board.

2. Respondent Printing Specialties and Paper Converters Union, Local 388, AFL (hereinafter called Local 388) is a labor organization within the meaning of Section 2(5) of the Act, and has its principal office at 1543 West 11th Street, Los Angeles, California, within this judicial district.

3. Respondent Walter J. Turner is and has been at all times herein material, an agent of Local 388 and is engaged in this judicial district in promoting or protecting the interests of employee members of respondent Printing Specialties and Paper Converters Union, Local 388, AFL.

4. The jurisdiction of this proceeding is conferred upon this Court by Section 10(1) of the Act.

5. On or about November 18, 1947, Sealright Pacific Ltd. (hereinafter called Sealright), pursuant to the provisions of Section 10(b) of the Act, filed a charge alleging that respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b), subsection 4(A) of the Act and affecting commerce within the meaning of Section 2(6) and (7) of the Act. A copy of said charge is attached hereto marked "Exhibit 1" and made [3] a part hereof.

6. Said charge was thereafter duly referred to Petitioner as Regional Director of the 21st Region of the Board for investigation. Petitioner has investigated the said charge.

7. After such investigation, Petitioner has reason to believe and believes such charge is true and that a Complaint of the Board based thereon should issue against respondents. More specifically, from the investigations, Petitioner has reason to believe and believes that respondents and each of them have engaged in and are engaging in conduct in violation of Section 8(b), subsection 4(A) of the Act, within the meaning of Section 2(6) and (7) of the Act as follows:

(a) Sealright Pacific Ltd. is a corporation organized under and existing by virtue of the laws of the State of California. Its principal office and place of business is located at 1577 Rio Vista Avenue, Los Angeles, California, where it is engaged in the manufacture, sale and distribution of paper food containers and milk bottle caps. In the course and conduct of its business, it purchases and causes to be transported to its Los Angeles plant from points outside the State of California, paper, steel, shipping cases, etc., all valued at an excess of $1,000,000.00 annually. Its finished products comprising milk bottle caps, milk bottle closures and food containers, are valued at an excess of $1,000,000.00 annually and more than 50 per cent of such products are shipped outside the State of California.

(b) Los Angeles Seattle Motor Express, Inc. (hereinafter called L. A. Seattle), 1147 Staunton Avenue, Los Angeles, is a common carrier operating motor trucks between Los Angeles and points in the Pacific Northwest. It has carried Sealright's products for a number of years.

(c) On November 13, 1947, respondent Walter J. Turner, vice president of Local 388, advised L. A. Seattle that if it continued to handle Sealright's products, L. A. Seattle would be picketed by [4] Local 388.

(d) On about November 14, 1947, representatives of Local 388 followed two trucks loaded with Sealright's products to the L. A. Seattle terminal where by forming a picket line around the two trucks containing the products of Sealright and telling the employees that the trucks contained "hot cargo" and not to "handle it," induced and encouraged the employees of L. A. Seattle, by orders, force, threats, or promises of benefits, not to transport or handle the goods of Sealright. After November 14, 1947, as a result of the above conduct of Local 388 the employees of L. A. Seattle refused to transport or handle the goods of Sealright. Local 388 engaged in the foregoing conduct to force or require L. A. Seattle to cease handling or transporting the products of Sealright.

(e) West Coast Terminals Co. (hereinafter called West Coast) is a public wharfinger with its docks and wharves located on Pier A, Berths 2 and 3, Terminal Island, Long Beach (2), California. On or prior to November 17, 1947, West Coast received from Panama Pacific Lines Vessell S. S. Green Bay Victory, a consignment of rolls of paper destined for Sealright's Los Angeles plant.

(f) On November 17, 1947, while employees of West Coast were engaged in loading the rolls of paper onto freight cars consigned to Sealright in Los

Los Angeles, a group of pickets representing Local 388 appeared at the docks of West Coast and, by forming a picket line around the freight cars being loaded with the rolls of paper for Sealright, induced and encouraged the employees of West Coast, by orders, force, threats, or promises of benefits, not to handle or work on the paper consigned to Sealright. Since November 17, 1947, as a result of the above conduct of Local 388 and the continued picketing by Local 388 of the docks of West Coast, the employees of West Coast have refused to handle or work on the goods consigned to Sealright. Local 388 [5] engaged in the foregoing conduct in order to force or require West Coast to cease handling or transporting the products of Sealright.

8. Unless restrained, the acts above described are in imminent likelihood of being repeated. Thereby irreparable damage will be done to the policies of the Act. To avoid such results, it is just and proper, and appropriate and necessary, that, pending the final adjudication by the Board of the matters involved in said charge, respondents be enjoined and restrained from the commission of said acts, similar acts or repetitions thereof.

Wherefore, Petitioner prays:

1. That the Court issue a rule directing respondents Printing Specialties and Paper Converters Union, Local 388, AFL, and Walter J. Turner, and each of them, to appear to show cause before this Court, at a time fixed by this Court, why an injunction should not issue enjoin-

ing or restraining respondents and each of them and their agents, servants, employees, attorneys, and all persons in active concert or participation with them, pending final adjudication of the Board of such matters, from:

(a) Engaging in or inducing or encouraging the employees of West Coast Terminal Co. and Los Angeles Seattle Motor Express, Inc. by orders, force, threats, or promises of benefits, or by permitting any such to remain in effect, or by any other like acts or conduct, to engage in a concerted refusal in the course of their employment to transport, or otherwise handle any goods, articles, materials, or commodities or perform any services in order to force or require West Coast Terminals Co. and Los Angeles Seattle Motor Express, Inc. to cease handling, transporting the materials or products of Sealright Pacific Ltd., or to cease doing business with Sealright Pacific Ltd.

(b) Engaging in, or inducing or encouraging the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to transport or otherwise handle any goods, articles, materials, or commodities or to perform any [6] services, in order to force or require any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of Sealright Pacific, Ltd., or to cease doing business with Sealright Pacific, Ltd.

2. That upon return of the rule the Court issue an order enjoining and restraining respondents and each of them in the manner set forth above.

3. That the Court grant such other and further relief as may be just and proper.

HOWARD F. LeBARON
Regional Director National Labor Relations Board
Twenty-First Region

GEORGE H. O'BRIEN
Attorney National Labor Relations Board

[Verified.]

[Endorsed]: Filed Dec. 17, 1947. Edmund L. Smith, Clerk. [7]

[Title of District Court and Cause]

MOTION

To the Honorable District Judge of the United States District Court for the Southern District of California, Central Division [8]

Comes now George H. O'Brien, attorney, National Labor Relations Board, and respectfully moves that this Court enter an order requiring respondents to appear before this Court on a date and time certain and show cause if any there be why said respondents should not be enjoined and restrained as prayed in the petition heretofore filed herein.

GEORGE H. O'BRIEN
Attorney National Labor Relations Board Twenty-First Region
111 West Seventh Street
Los Angeles 14, California

[Endorsed]: Filed Dec. 13, 1947. Edmund L. Smith, Clerk. [9]

[Title of District Court and Cause]

ORDER TO SHOW CAUSE

Upon petition of Howard F. LeBaron, Regional Director of the Twenty-First Region of the National Labor Relations Board, for an [10] injunction enjoining and restraining Printing Specialties and Paper Converters Union, Local 388, AFL, and Walter J. Turner, respondents herein, from engaging in certain acts in violation of the National Labor Relations Act, as amended, pending the final adjudication of said Board with respect to such matters, and good cause appearing therefor,

It Is Ordered that Printing Specialties and Paper Converters Union, Local 388, AFL, and Walter J. Turner, the respondents herein, appear before this Court at Los Angeles, California, on the 30th day of December, 1947, at ten o'clock A. M., or as soon thereafter as counsel can be heard, and then and there show cause, if any there be, why, pending the final adjudication of the Board with respect to such matters, they and each of them, and their agents, servants, employees, attorneys, and all persons in active concert or participation with them, should not be enjoined and restrained as prayed in said petition.

~~It Is Further Ordered, that respondents Printing Specialties and Paper Converters Union, Local 388, AFL, and Walter J Turner, and each of them, shall file any answers to the allegations of said petition and the affidavits attached thereto in the office of the Clerk of this Court, and serve a copy thereof upon petitioner~~

~~at ....., on or before ..... o'clock A. M. on the day of ....., 194..~~ [PJM]

It Is Further Ordered that service of a copy of this rule together with a copy of said petition upon which it is issued be made by U. S. Marshal upon respondents Printing Specialties and Paper Converters Union, Local 388, AFL, and Walter J. Turner in any manner provided in the Rules of Civil Procedure for District Courts of the United States, or by registered mail; that similar service be made upon Sealright Pacific [11] Ltd., the charging party; and that proof of such service be filed herein by the U. S. Marshal.

PAUL J. McCORMICK
United States District Judge

Signed at Los Angeles, California, at 1:50 P. M. this 18th day of Dec., 1947.

[Endorsed]: Filed Dec. 13, 1947. Edmund L. Smith, Clerk. [12]

[Title of District Court and Cause]

NOTICE OF MOTION TO DISMISS PETITION FOR AN INJUNCTION UNDER SECTION 10(1) OF THE NATIONAL LABOR RELATIONS ACT AS AMENDED

To Winthrop A. Johns and George H. O'Brien, Attorneys for Petitioner, National Labor Relations Board, Twenty-First Region, 111 West Seventh Street, Los Angeles 14, California, Please Take Notice That:

On the 30th day of December, 1947, at 10:00 A. M., or as soon thereafter as counsel can be heard, respondents

will appear before this Court at the United States Post Office and Court House Building in the City of Los Angeles, State of California, and will bring the following motion on for hearing:

1. To dismiss this proceeding on the ground that the Court lacks jurisdiction over the same, in that the petition herein has been filed under [13] color of authority of Section 10(1) of the National Labor Relations Act as amended June 23, 1947, (Public Law 101, 80th Cong., Ch. 120, 1st Sess.), and more particularly said petition has been filed pursuant to that provision of Section 10(1) which purports to confer jurisdiction upon this Court to grant injunctive relief against activities proscribed by paragraph (4) (A) of Section 8(b) of said amended Act, which Sections 8(b) (4) (A) and 10(1) are contrary to the Constitution of the United States, Amendments I, V, and XIII, and are therefore wholly invalid and without any legal force and effect.

2. To dismiss this proceeding on the ground that the Court lacks jurisdiction over the person of the respondents and the subject matter of this proceeding in that the sole allegation relating to said jurisdiction set forth in the petition herein invokes the purported authority of Section 10(1) of the National Labor Relations Act as amended June 23, 1947, (Public Law 101, 80th Cong., Ch. 120, 1st Sess.), which portion of said enactment is unconstitutional and void in that it contravenes the Constitution of the United States, Amendments I, V, and XIII.

3. To dismiss this proceeding for lack of jurisdiction on the ground that the petition herein prays for injunctive relief against lawful acts of respondents, which relief in substance and in form would be contrary to the Constitution of the United States, Amendments I, V, and

XIII, and that no other claim upon which relief can be granted has been stated.

ROBERT W. GILBERT
CLARENCE E. TODD
ALLAN L. SAPIRO
By Robert W. Gilbert
Attorneys for Respondents Specially Appearing for Purpose of this Motion

Dated: December 24, 1947

Good cause being shown, the time of notice is hereby shortened to two days.

PAUL J. McCORMICK
Judge, United States District Court

Signed at Los Angeles, California, at 11:30 A. M. this 24th day of December, 1947. [14]

RESPONDENTS' MEMORANDUM OF POINTS AND AUTHORITIES

I.

Members of Labor Organizations as Well as Other Persons Are Constitutionally Guaranteed the Right to Express Themselves on Matters of Public Concern Without Being Subject to Prior Restraint

Near v. Minnesota, 283 U. S. 697, 51 S. Ct. 625, 75 L. Ed. 1357

Grosjean v. American Press Co., 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093

Carlson v. California, 310 U. S. 106, 60 S. Ct. 746, 84 L. Ed. 1104

In re Blaney (decided October 3, 1947) 30 A. C. 648, 654, 184 P (2d) 892

II.

Denial of the Right of Workingmen to Jointly Publicize a Labor Dispute With the Purpose of Persuading Other Employees to Cease Dealing With the Employer in the Dispute Abridges the Cognate Rights of Free Speech and Assembly Embodied in the First Amendment and Amounts to a Denial of Liberty Without Due Process of Law in Contravention of the Fifth Amendment

The rights secured by the First Amendment are cognate rights, or facets of one right, and all are upheld by the "Free Speech" decisions of the Supreme Court of the United States.

Milk Wagon Drivers v. Meadowmoor Dairies, 312 U. S. 287, 293, 61 S. Ct. 552, 85 L. Ed. 497, 132 A. L. R. 1200

Murdock v. Pennsylvania, 319 U. S. 105, 111, 63 S. Ct. 870, 87 L. Ed. 1292, 146 A. L. R. 81

Thomas v. Collins, 323 U. S. 516, 530, 531, 65 S. Ct. 315, 89 L. Ed. 436 [15]

De Jonge v. Oregon, 299 U. S. 353, 57 S. Ct. 255, 81 L. Ed. 278

The right of all persons to gather together and peaceably address their attention to matters of common concern as a means of furthering their political, social, economic or religious objectives is basis to our form of representative democracy, irrespective of statutory law.

United States v. Cruikshank, 92 U. S. 542, 552, 23 L. Ed. 588

Herndon v. Lowry, 301 U. S. 242, 259, 57 S. Ct. 732, 81 L. Ed. 1066

De Jonge v. Oregon, supra,

> "The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts . . . and the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members, or others to assemble and discuss their affairs and to enlist the support of others."

Thomas v. Collins, supra, 323 U. S. at 537, emphasis supplied.

See also In re Porterfield, 28 Cal. (2d) 91, 168 P. (2d) 706, 167 A. L. R. 675

III.

Peaceful Picketing and Threat of Peaceful Picketing Which Constitute the Only Charges Made Against Respondents Come Within the Constitutional Safeguards of the First Amendment

Cafeteria Employees' Union v. Angelos, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58

Hotel Employees' Local v. Board, 315 U. S. 437, 62 S. Ct. 706, 86 L. Ed. 946

Bakery Wagon Drivers' Local v. Wohl, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178

Carpenters' Union v. Ritter's Cafe, 315 U. S. 722, 62 S. Ct. 807, 86 L. Ed. 1143

A. F. of L. v. Swing, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855 [16]

Carlson v. California, 310 U. S. 106, 60 S. Ct. 746, 84 L. Ed. 1104

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093

Senn v. Tile Layers' Protective Union, 301 U. S. 468, 57 S. Ct. 857, 81 L. Ed. 1229

In re Blaney, supra, 30 A. C. at 652

In re Porterfield, supra, 28 Cal. (2d) at 114

Park and Tilford Import Corp. v. Int'l. Brotherhood of Teamsters, 27 Cal. (2d) 599, 608, 165 P. (2d) 891, 162 A. L. R. 1426

In re Bell, 19 Cal. (2d) 488, 497, 122 P. (2d) 22

McKay v. Retail Automobile Salesmen's Local Union, 16 Cal. (2d) 311, 319, 333, 106 P. (2d) 373

Fortenbury v. Superior Court, 16 Cal. (2d) 405, 106 P. (2d) 411

In re Lyons, 27 Cal. App. (2d) 293, 81 P. (2d) 190

Hughes v. Superior Court, (decided November 20, 1947,) 82 A. C. A. 491, 508

This "modern trend of decision" makes it plain that publicizing the facts of a labor dispute, whether verbally, by the publication of printed matter, or by peaceful picketing, comes within the sphere of protection from prior restraint which is guarded with a jealous eye by the highest tribunals of state and nation.

Emde v. San Joaquin County Labor Council, 23 Cal. (2d) 146, 154, 161, 143 P. (2d) 20, 150 A. L. R. 916

IV.

Fairly Construed and With Conclusions of Law Eliminated, the Petition Herein Merely Charges Respondents With Picketing and Threatening to Picket the Products of the Employer With Whom a Labor Dispute Is Pending. Picketing of Such "Unfair" Products Is Well Recognized as Coming Within the Protection of the First Amendment

Carpenters' Union v. Ritter's Cafe, supra, 315 U. S. at 727

Bakery Wagon Drivers' Local v. Wohl, supra

In re Blaney, supra, 30 A. C. at 655, 184 P. (2d) at 897, col. 2

Park and Tilford Import Corp. v. Int'l. Brotherhood of Teamsters, supra [17]

Fortenbury v. Superior Court, supra

See also Emde v. San Joaquin County Labor Council, supra

V.

This Statute Comes Before the Court Aided by No Presumption of Constitutionality, Since the Usual Presumption Must Yield to the High Favor Accorded to the Rights Secured by the First Amendment

Thomas v. Collins, supra, 323 U. S. at 529, 530

Hague v. C. I. O., 307 U. S. 496, 59 S. Ct. 954, 83 L. Ed. 1423

Cantwell v. Connecticut, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352

Schneider v. New Jersey, 308 U. S. 147, 60 S. Ct. 315, 89 L. Ed. 430

Lovell v. Griffin, 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949

VI.

These Personal Rights, of Worship, Assembly, Petition, Free Speech and Free Press Enjoy Precedence and High Favor Not Accorded to Property Rights and Are Susceptible of Restriction Only to Prevent Grave and Impending Public Danger

Tucker v. Texas, 326 U. S. 517, 66 S. Ct. 274, 90 L. Ed. 274

Marsh v. Alabama, 326 U. S. 501, 66 S. Ct. 276, 90 L. Ed. 265

Thomas v. Collins, supra, 323 U. S. at 529, 530

West Virginia Board of Education v. Barnette, 319 U. S. 624, 638-39, 63 S. Ct. 1178, 1186 Col. 1

Murdock v. Pennsylvania, supra

In re Porterfield, supra

See Also People v. Oyama, 29 Cal. (2d) 164, 176

Whatever the legislative judgment, the Court must determine independently in the light of our constitutional tradition whether a clear and present danger of the gravest abuses endangering society as a whole exists to justify the intrusion upon the domains of free speech and assembly under Sections 10(1) and 8(b) (4) (A) of the National Labor Relations Act as amended June 23, 1947. [18]

VII.

Section 8(b) (4) (A) of the Amended National Labor Relations Act, Incorporated by Reference in Section 10(1) of Said Act, Is Void on Its Face as an Abridgment of Free Speech and Assembly

The existence of such a statutory provision "which does not aim specifically at evils within the allowable area of (government) control, but on the contrary sweeps within its ambit other activities that in ordinary circum-

stances constitute an exercise of freedom of speech . . ." inevitably "results in a continuous and prevasive restraint on all freedom of discussion that might reasonable be regarded as coming within its purview."

Where such regulation of the dissemination of information is involved, there are special reasons for testing the challenged section of the statute on its face. If certain of its provisions operate to prohibit peaceful picketing, they are invalid even though they might also prohibit acts that may properly be made unlawful.

Jones v. Opelika, 316 U. S. 584, 319 U. S. 103, 63 S. Ct. 890, 87 L. Ed. 1290

Thornhill v. Alabama, supra, 310 U. S. at 97

Carlson v. California, supra

Schneider v. New Jersey, supra, 308 U. S. at 162-165

Hague v. C. I. O., supra, 307 U. S. at 518

Lovell v. Griffin, supra, 303 U. S. at 451

Stromberg v. California, 283 U. S. 359, 369, 51 S. Ct. 532, 75 L. Ed. 1117

In re Blaney, supra, 30 A. C. at 656-658

In re Porterfield, supra

In re Bell, supra, 19 Cal. (2d) at 495

VIII.

The Terms of Section 8(b) (4) (A), Which Are Incorporated in the Proposed Injunction Sought Herein Almost Verbatim, Are Violative of Due Process of Law Because They Are Vague, Indefinite and Uncertain

A statute which declares unlawful the doing of an act in terms so vague [19] than men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of

law. Language prohibiting conduct that may be prohibited and conduct that may not afford no reasonably ascertainable standard and is therefore too uncertain and vague to be enforced.

Lanzetta v. New Jersey, 306 U. S. 451, 59 S. Ct. 618, 81 L. Ed. 888

In re Blaney, supra, 30 A. C. at 656

In re Bell, supra, 19 Cal. (2d) at 495

IX.

The Separability Clause of the Amended National Labor Relations Act Set Forth in Section 16 Cannot Save Section 8(b) (4) (A) as Incorporated in Section 10(1) From Being Declared Totally Invalid

Smith v. Cahoon, 283 U. S. 553, 563

In re Bell, supra, 19 Cal. (2d) at 498

In re Porterfield, supra, 28 Cal. (2d) at 120

In re Blaney, supra, 30 A. C. at 658-660

Where there is no possibility of mechanical severance, as where the language is so broad as to cover subjects within and without the legislative power, the general language of the statutory provision infringing upon the constitutional right of free speech leaves the count with no alternative but to nullify the entire section.

X.

The Application of Section 10(1) in the Manner Prayed for by Petitioner Herein Would Violate the Inhibition of the Thirteenth Amendment Against Involuntary Servitude

See Podlock v. Williams, 322 U. S. 4, 64 S. Ct. 792, 88 L. Ed. 1095

[Endorsed]: Filed Dec. 24, 1947. Edmund L. Smith, Clerk. [20]

[Title of District Court and Cause]

AFFIDAVIT OF WALTER J. TURNER IN SUPPORT OF MOTION TO DISMISS

State of California
County of Los Angeles—ss.

Walter J. Turner, being duly sworn, deposes and says that:

Affiant is now, and was on December 17, 1947, and has been for some time previous to December 17, 1947, Secretary-Treasurer of the Printing Specialties and Paper Converters Union, Local 388, AFL, with offices at 1543 West 11th Street, Los Angeles, California;

Affiant is the same Walter J. Turner who is named as a respondent in the above-entitled proceeding;

Printing Specialties and Paper Converters Union, Local 388, hereinafter [21] referred to as Local 388, is a subordinate union of the International Printing Pressmen and Assistants' Union of North America, affiliated with the American Federation of Labor, and includes within its membership approximately 1,800 employees of the paper conversion and allied industries in the City of Los Angeles and nearby communities;

Local 388 is a party to numerous collective bargaining agreements with the various employers of its members engaged in the manufacture, distribution and sale of envelopes, paper boxes of both the folding and set-up varieties, waxed paper, manifold sales books, bank checks, tags, labels, corrugated boxes, and other similar paper products, in addition to paper food containers and milk bottle caps.

Local 388 has consummated agreements with various employers engaged in the manufacture, distribution and

sale of said paper products during the past twelve months by the terms of which approximately 1,500 members of the union are assured of a prevailing scale of minimum wages ranging from $1.20 to $1.33½ per hour for the lowest skilled male job classification, and from $1.10 to $1.22 per hour for the lowest skilled female job classification, with progressively higher rates for the several skilled job classifications set forth in said agreements.

All of the aforementioned collective bargaining agreements negotiated by Local 388 within the immediate past twelve months provide the approximately 1,500 union members coming within the scope of their terms and provisions with at least six (6) designated holidays for which they have received or are entitled to receive full compensation according to their regular wage scales.

Local 388 was recognized as the exclusive bargaining agent of the production employees of the Los Angeles plant of Sealright Pacific, Ltd. during the month of September, 1941 by said corporation, and a collective bargaining agreement was entered into between said union and said employer at or about that date. Each year thereafter from 1941 to the year 1946 successive collective bargaining agreements were negotiated and executed between Local 388 and Sealright Pacific, Ltd. Each collective bargaining agreement from the initial agreement in 1941 to the last agreement entered into in 1946 was arrived at by [22] negotiations between Local 388 and Sealright Pacific, Ltd. without any strike, lockout, or other similar interruption of production taking place;

The latest collective bargaining agreement executed between Local 388 and Sealright Pacific, Ltd. provided for opening for modification or termination as of Octo-

ber 16, 1947 by either party upon sixty days' notice on or after the 16th day of August, 1947. Pursuant to said provision of the agreement (and in accordance with Section 8 (d) (1) of the National Labor Relations Act as amended June 23, 1947), Local 388 gave notice to Sealright Pacific, Ltd. of proposed modifications thereof on August 16, 1947.

Between August 16, 1947 and September 16, 1947 approximately six (6) meetings were held between representatives of Local 388 and representatives of Sealright Pacific, Ltd. for the purpose of negotiating with respect to said proposed contract modifications, but no agreements were reached during the course of these meetings. On September 15, 1947, in compliance with Section 8 (d) (3) of the National Labor Relations Act as amended on June 23, 1947, Local 388 notified the Federal Mediation and Conciliation Service and the California State Department of Industrial Relations that a dispute existed.

Between September 16, 1947 and October 29, 1947 five additional negotiating meetings were held between representatives of Local 388 and representatives of Sealright Pacific, Ltd., during the course of which meetings mutual consent was arrived at between the two parties as to all terms of a new collective bargaining agreement, except wage rates and holiday pay. At the last of these meetings on October 29, 1947 Sealright Pacific Ltd. offered to raise the hourly rate for the lowest skilled male job classification from $1.02½ to $1.10 per hour, (the prevailing male base rate ranging from $1.20 to $1.33½ per hour as aforementioned). It also offered to raise the hourly rate for the lowest skilled female job classification from $0.87½ per hour to $0.92½ per hour, (the prevailing female base rate ranging from $1.10 to $1.22 per hour).

Corresponding wage adjustments in the rates for the more highly skilled job classifications were proposed, and in addition Sealright Pacific, Ltd. expressed its willingness to offer a further general wage increase of two and one-half cents ($0.02½) more per hour to become effective on or about January 16, 1948. Sealright [23] Pacific, Ltd. then expressed its unwillingness to increase the number of designated paid holidays from three (3) to the prevailing six (6) as requested by Local 388.

Basing its request for proposed modifications with respect to wages and holiday pay on the standards contained in the various existing agreements between Local 388 and the several employers of nearly 1,500 members of said local union mentioned hereinabove, Printing Specialties and Paper Converters Union, Local 388 was unwilling to accept the wage offer proposed by Sealright Pacific. Ltd. on or about October 29, 1947, after that employer had rejected the compromise proposal made by Local 388 for a male base rate of $1.17½ per hour and a female base rate of $1.02½ per hour, together with a provision for six (6) paid holidays. Being unable to reach agreement with said employer with respect to the sole disputed matters of wage rates and holiday pay, Local 388 called a lawful strike of its members against Sealright Pacific, Ltd. on or about Monday, November 3, 1947.

At the time said strike was instituted on or about November 3, 1947, all of the approximately 70 production employees of the Los Angeles plant of Sealright Pacific. Ltd. were members in good standing of Local 388. All but three of said employees joined said strike against their employer, Sealright Pacific, Ltd. Peaceful picket lines were established by Local 388 in front of or near the

entrances to the struck plant upon the occasion of the commencement of the strike, and have continued from that date to this.

At some time between November 3, 1947 and November 17, 1947, affiant met and conferred with a Mr. Lacey, whom affiant is informed and believes is manager of the Los Angeles-Seattle Motor Express, Inc. Affiant at that time informed Los Angeles-Seattle Motor Express, Inc. that Local 388 was engaged in a strike due to a wage dispute with Sealright Pacific, Inc. Affiant also informed Los Angeles-Seattle Motor Express, Inc. that Local 388 intended to peacefully picket the Sealright products manufactured under strike conditions and at substandard wages for the purpose of publicizing the dispute and soliciting the assistance of other workers asking that they decline to handle this merchandise. At no time did affiant advise Los Angeles-Seattle Motor Express, [24] Inc. that Local 388 would picket all or any of that firm's operations as such, if it continued to handle Sealright products, nor did affiant in any way indicate or imply that Local 388 would picket any other products being handled or transported by said firm for companies other than Sealright Pacific, Ltd., under any circumstances whatsoever.

On or about November 14, 1947, members of Local 388 on strike at Sealright Pacific, Ltd., formed a peaceful picket line around two truck-loads of Sealright products at the Los Angeles-Seattle Motor Express, Inc. terminal. Said striking members of Local 388 then and there advised the employees of Los Angeles-Seattle Motor Express,

Inc., that the Sealright products were manufactured under strike conditions and for substandard wages and requested them not to handle said products. At no time did any officer, agent, representative, or member of Local 388 order, force, threaten any reprisal against or promise any specific benefit to any employee of the Los Angeles-Seattle Motor Express, Inc., for the purpose of bringing about the refusal of said employee to transport or handle the aforementioned or any other Sealright products, or for any other purpose.

On or about November 17, 1947 and for several days thereafter, Local 388 peacefully picketed Sealright products being loaded onto three box cars at the West Coast Terminals Company, Terminal Island, Long Beach, California. Said Sealright products consisted of rolls of paper consigned from a New York plant of Sealright Pacific, Ltd. to the Los Angeles plant of said corporation for use in continued manufacturing operations under strike conditions. At no time has Local 388 picketed any or all of the operations of the West Coast Terminals Company as such, nor has Local 388 picketed any other products being handled or transported by said firm for companies other than Sealright Pacific, Ltd. At no time has Local 388 interfered in any manner with the unloading of any ship or ships of the Panama Pacific Lines or of any other steamship company.

Said three box cars were located on a siding alongside of the warehouse of the West Coast Terminals Company, when Local 388 commenced picketing the same, and at no time during the course of such picketing did the picket

lines established by Local 388 pass in front of the doors of the warehouse. Whenever [25] during such picketing, it was necessary for the West Coast Terminals Company to move these three box cars in order to bring other cars on to or remove other cars from the siding, Local 388 temporarily discontinued its picketing activities and did not in any way interfere with the moving of the three box cars in question incidental to these operations. When the three cars had been moved from and returned to their previous position alongside the warehouse, as took place on several occasions, the picketing of said box cars containing Sealright products was resumed.

At no time in connection with the peaceful picketing of said Sealright products alongside the warehouse of the West Coast Terminals Company did any officer, agent, representative or member of Local 388 order, force, threaten any reprisal against or promise any specific benefit to any employee of said firm for the purpose of bringing about the refusal of said employee to transport or handle the aforementioned or any other Sealright products, or for any other purpose.

Further affiant sayeth not.

WALTER J. TURNER

Subscribed and sworn to before me this 23rd day of December, 1947.

MARIAN A. HAUGER

Notary Public in and for the State of California, County of Los Angeles

My Commission Expires June 26, 1951. [26]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Dec. 24, 1947. Edmund L. Smith, Clerk. [27]

[Title of District Court and Cause]

EXHIBIT 1 TO PETITION FOR INJUNCTION [28]

NLRB 508 (10-20-47) Copy

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Printing Specialties and Paper Converters Union,
(Name of labor organization or its agent)
Local 388, AFL, at 1543 West Eleventh, Los Angeles, California, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b), subsections (4)(A) of said Act, in that: (Recite in detail in paragraph 2 the basis of the charge. Be specific as to names, addresses, plants, dates, places, and other relevant facts)

2. It engaged in, induced and encouraged the employees of L. A. Seattle Motor Express and the employees of West Coast Terminals Co. to engage in a concerted refusal in the course of their employment to transport or otherwise handle any goods, articles, materials or commodities of Sealright Pacific, Ltd. for the purpose of forcing or requiring L. A. Seattle Motor Express and West Coast Terminals Co. to cease handling, transporting or otherwise dealing in the products of Sealright Pacific, Ltd., or to cease doing business with Sealright Pacific, Ltd.

Said violations occurred in that, on November 14 and 17, 1947, Printing Specialties and Paper Converters Union, Local 388, AFL, compelled L. A. Seattle Motor Express, under threat of picketing said company, to refuse to handle any freight tendered it by Sealright Pacific, Ltd., at said time L. A. Seattle Motor Express having 5,500 pounds of paper products of Sealright Pacific, Ltd. on its dock to be shipped out of the State of California which L. A. Seattle Motor Express has refused and does now refuse to ship; and said L. A. Seattle Motor Express has refused and does now refuse to handle any products of Sealright Pacific, Ltd., due to the threat of Printing Specialties and Paper Converters Union, Local 388, AFL, to picket L. A. Seattle Motor Express; and on November 17, 1947, Printing Specialties and Paper Converters Union, Local 388, AFL, picketed Berths 232 A and B, Terminal Island, California, and thereby caused longshoremen employed by West Coast Terminals Co. Working at said berths to cease unloading paper supplies shipped via Pan Pacific Lines from New York State to Sealright Pacific, Ltd.

The threats and activities of Printing Specialties and Paper Converters Union, Local 388, AFL, set out in the paragraphs above, and the actions of L. A. Seattle Motor Express and West Coast Terminals Co., above set out, in response to said threats and activities of Printing Specialties and Paper Con-

verters Union, Local 388, AFL, have continued from the dates set forth above to the present and the aforesaid companies and the aforesaid union do now threaten to continue said activities.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. Name of Employer Sealright Pacific, Ltd.

4. Location of plant involved 1577 Rio Vista Ave., (Street)
Los Angeles, Calif. Employing 135
(City) (State) (Number of workers)

5. Nature of business Manufacturers of paper milk bottle caps and closures and sanitary food containers

6. (Paragraphs 6, 7, and 8 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9(f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number ..... The financial data filed with the Secretary of Labor is for the fiscal year ending ..... A Certificate has been filed with the National Labor Relations Board in accordance with Section 9(f)(B)(2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

7. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

8. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

SEALRIGHT PACIFIC, LTD.
(Full name of party filing charge)

1577 Rio Vista Avenue, Los Angeles, Calif.
(Address) (Street) (City) (State)

ANgelus 6104
(Telephone number)

By /s/ Wm. S. Lee
(Signature of representative or person filing charge)

William S. Lee
Executive Vice-President
(Title or office, if any)

Do Not Write in This Space
Case No. 21-CC-13
Date filed 11-18-47
9(f), (g), (h) cleared.....

Subscribed and sworn to before me this 18th day of November, 1947, at Los Angeles, California, as true to the best of deponent's knowledge, information and belief.

/s/ Daniel J. Harrington (Board Agent)
Daniel J. Harrington, Attorney

[Endorsed]: Filed Dec. 29, 1947. Edmund L. Smith, Clerk. [29-30]

[Title of District Court and Cause]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR INJUNCTION UNDER SECTION 10(1) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED [31]

I. Preliminary Statement

A. Jurisdiction

This proceeding is before the Court on petition filed on behalf of the National Labor Relations Board, herein referred to as the Board, by Howard F. LeBaron, Regional Director of the 21st Region of the National Labor Relations Board, Los Angeles, California, pursuant to Section 10(1) of the National Labor Relations Act, as amended (Pub. Law 101, 80th Cong., Ch. 120, 1st Sess., June 23, 1947) herein referred to as the Act. This petition was filed after preliminary investigation by petitioner of a charge filed by Sealright Pacific Ltd., herein called Sealright, that respondents have engaged in unfair labor practices within the meaning of Section 8(b) 4 (A) of the Act. The unfair labor practices charged were committed at Los Angeles, California, within this judicial district. Respondent Printing Specialties and Paper Converters Union, Local 388, AFL, hereinafter called Local 388, is a labor organization within the meaning of the Act. It has its principal office at Los Angeles, California. Respondent Walter J. Turner is an agent of Local 388 within the meaning of Section 2(13) and 10(1) of the Act. Respondents are engaged in this judicial district in promoting and protecting the interests of employee members of Local 388. This Court has jurisdiction under the provisions of Section 10(1) of the Act.

B. The statute pursuant to which relief is sought

The National Labor Relations Act, as amended, is an exercise of the power of Congress to prevent and mitigate interruptions to interstate commerce arising out of labor disputes which affect such commerce. The constitutionality of such legislation is not open to question. N. L. R. B. v. Jones & Laughlin Steel Co., 301 U. S. 1. For the purpose of protecting the public interest in such commerce, Congress proscribed practices on the part of labor unions and employers which it deemed inimical to the public welfare (Section 1, 8). To effectuate the statutory policy thus declared, and to administer the provisions of the Act, Congress created the National Labor Relations Board, and charged it with the duty, inter alia, of hearing and determining complaints that employers or labor organizations have engaged in the proscribed practices (Section 3, 10). [32] The scheme of the statute permits any person to file with the Board charges that unfair labor practices have been committed (Section 10(b)). Upon the filing of such charges, the Board is authorized to issue a complaint (Section 10(b), 3(d)). The statute further provides that upon the issuance of such a complaint a hearing shall be held and testimony taken (Section 10(b)). Upon such testimony the Board is empowered to issue an order requiring cessation of any unfair labor practice found to have been committed, and requiring the offending party to take such affirmative action as may be necessary to effectuate the policies of the Act (Section 10(b) and (c)). Section 10(e) and (f) provide that such orders issued by the Board may be reviewed in appropriate Circuit Courts of Appeals. The power thus conferred upon the Board to determine whether unfair labor practices violative of Section 8 have

been committed, and the power conferred upon Circuit Courts of Appeals to review Board orders remedying such unfair labor practices is exclusive (Section 10(a), (e), (f)).

However, Congress recognized that unfair labor practices committed by labor organizations under Section 8(b) 4 (A) (B) (C), gave or tended to give rise to such serious and unjustifiable interruptions to commerce that their continuation during the period of investigation, hearing, and consideration between the filing of the charges and the issuance of a final order by the Board remedying such unfair labor practices, would result in irreparable injury to the national policy. Congress, therefore, in Section 10(1) of the Act, made it mandatory upon the officer or regional attorney of the Board to whom such a charge was referred, upon determining after investigation that there is reasonable cause to believe that the charge is true and that a complaint should issue, to file a petition in the appropriate District Court of the United States for appropriate injunctive relief pending final adjudication of the matter by the Board. The instant petition, alleging a violation of Section 8(b) 4 (A), was filed pursuant to this statutory mandate.

C. This Court is empowered to grant injunctive relief pending final relief pending final adjudication by the Board of the alleged violation of Section 8(b) 4 (A)

Section 10(1) of the Act vests jurisdiction to grant appropriate [33] injunctive relief in the appropriate District Courts of the United States "upon the filing," by the designated officer of the Board, of a petition therefor and the notification thereof of the parties affected. The jurisdiction of this Court to grant the relief prayed was

therefore established by the filing of the petition herein and the notification of the parties respondent, who are subject to the jurisdiction of this Court, that this proceeding has been instituted. The parties respondent are properly before this Court (Section 10(1)).

Section 10(1) expressly provides that in granting injunctive relief in Section 8(b) (4) cases pending final adjudication by the Board, the jurisdiction of District Courts shall not be limited by "any other provisions of law." Section 10(h) also provides that, "When granting appropriate temporary relief or a restraining order, * * * the jurisdiction of courts sitting in equity shall not be limited by the [Norris-LaGuardia] Act [47 Stat. 70, 29 U. S. C. § 101]." The jurisdiction conferred upon this Court is therefore entirely statutory and is not limited in any manner other than the limitations contained in the Act itself. That Congress can properly confer such jurisdiction upon the District Courts is settled beyond question. I. C. C. v. Brimson, 154 U. S. 447; Endicott Johnson Corp. v. Perkins, 317 U. S. 501, 510.

II. Upon the Facts Alleged in the Petition an Injunction Should be Issued Pending Final Adjudication by the Board of the Matters Presented

A. This Court is required to decide only whether the Board's Regional Director has reasonable cause to believe that the charge herein involved is true and that a complaint should issue thereon

The relief sought is in the nature of an interlocutory injunction. The Board's Regional Director is authorized by the terms of Section 10(1) to petition for injunctive

relief only "pending the final adjudication of the Board with respect to such matters." Consequently, the relief herein sought is limited to such time as may expire before the Board issues its final order in the case arising out of the charges filed with it that respondents have violated Section 8(b) 4 (A). The nature of the relief sought, the entire statutory scheme, as well as the express terms of Section 10(1), demonstrate [34] that the sole prerequisite to the granting of injunctive relief is a finding by this Court that the Regional Director has reasonable cause to believe that the charge is true and a complaint should issue. It cannot be contended that this Court is called upon to decide whether in fact the charge is true, or whether a violation has, in fact, been committed. These issues, as indicated in 1 (B) above, were reserved by Congress for determination by the Board in appropriate proceedings before it, subject to review by the appropriate Circuit Court of Appeals.

1. It is an elementary rule of equity practice that the granting of interlocutory relief pending determination of an issue on the merits does not turn upon a decision as to which party is ultimately entitled to prevail, but upon the existence of facts which indicate reasonable probability that the plaintiff is entitled to final relief. Douds, Reg. Dir. v. Wine etc. Union, F. Supp., C. C. A. 13, Labor Cases 564, 186 (D. Ct. S. D. N. Y.); Bowles v. Montgomery Ward, 143 F. 2d 38 (C. C. A. 7); Sinclair Refining Co. v. Midland Oil Co., 55 F. 2d 42 (C. C. A. 4); Northwestern Stevedoring Co., et al v. Marshall, 41 F. 2d 29 (C. C. A. 9). Indeed, if interlocutory relief could not be granted prior to ultimate determination of the rights of the parties, such relief could not be granted at all; the subject matter of the litigation before

the court might in the meanwhile be destroyed, irreparable injury inflicted, and the judicial process frustrated. Consequently, it is universal equity practice to grant interlocutory injunctive relief where necessary, simply upon a showing of a prima facie case for equitable relief. Bowles v. Montgomery Ward, supra; City of Louisville v. Louisville Home Telephone Co., 279 F. 949 (C. C. A. 6); Premier-Pabst Sales Co. v. McNutt, 17 F. Supp. 708; Walling v. Stylish Embroidery Studio, Inc., 63 F. Supp. 343; U. S. v. Hughes, 28 F. Supp. 977; Eastern Texas Railroad Co. v. Railroad Commission of Texas, 242 F. 300.

2. In providing for interlocutory relief in appropriate cases under the Act, Congress adopted this essential rule of equity practice and conditioned the right to such relief not upon a determination of the ultimate rights of the parties, but upon a determination that reasonable cause exists to believe that a violation has been committed. In addition to the precedents in equity practice, Congress drew upon its own precedents in the Federal Trade Commission Act, 52 [35] Stat. 111, 15 U. S. C. Sec. 53, and the Securities and Exchange Act of 1933 (48 Stat. 86, 15 U. S. C. Sec. 77t), in which administrative agencies had similarly been authorized to obtain interlocutory injunctive relief simply upon a proper showing of "reasonable cause." See F. T. C. v. Thompson-King & Co., 109 F. 2d 516 (C. C. A. 7). Compare, I. C. C. v. Brimson, 154 U. S. 447; Endicott Johnson Corp. v. Perkins, 317 U. S. 501, 510; Oklahoma Press Co. v. Walling, 327 U. S. 186; N. L. R. B. v. Northern Trust Co., 148 F. 2d 24 (C. C. A. 7), certiorari denied, 326 U. S. 731; Goodyear Tire and Rubber Co. v. N. L. R. B., 122 F. 2d 450 (C. C. A. 6); Cudahy v. N. L. R. B., 117 F. 2d 692

(C. C. A. 10). Compare also, such federal statutes as R. S. § 1014, 18 U. S. C. § 591, authorizing removal of an accused for trial from one federal district to another.

3. Congress, in providing for interlocutory injunctive relief under Section 10(1) of the Act, did not impose on Board agents the burden of proving, or upon the courts the burden of deciding, that the facts alleged in the charges were true, or that a violation of Section 8(b) 4 had in fact occurred. If the Board agents had been required to establish the truth of the charges as a condition to obtaining an injunction, the entire purpose of the provision for interlocutory relief would be frustrated, for the trial of such issues before the courts would presumably be no less time consuming than would similar proceedings before the Board, which is explicitly directed by statute to process such cases in the most expeditious manner (Section 10(1)). The purpose of providing for injunctive relief pending final determination by the Board was to assure that interstate commerce would not be adversely affected by labor disputes in the time necessarily consumed by trial and consideration of the issues of fact. This purpose hardly can be achieved if those very issues must be decided by the court prior to the issuance of the injunction.

Moreover, if the district courts had been charged with the duty of determining the truth of the charges, or the existence of a violation, a duplication of functions would have been created. For these are the very issues which the Board is empowered to and charged with the duty of deciding in complaint proceedings contemplated by Section 10(b) of the Act, subject to review by the Circuit Courts of Appeals under Section 10(e) and (f). Sections 10(a) of [36] the National Labor Relations Act,

prior to its amendment, expressly provided that the Board's power "to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce * * * shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise." In amending Section 10(a), Congress retained the language which provides that the Board's power shall not be affected, etc., but omitted the phrase which vested the power to prevent unfair labor practices exclusively in the Board. The Conference Committee, which drafted the final version of the amendment, explained in its report that the word "exclusive" was omitted because the bill as finally drafted contained "provisions authorizing temporary injunctions enjoining alleged unfair labor practices" and a provision (Section 303 of the Labor Management Relations Act) which authorized private persons to bring suits against labor organizations in federal district courts to recover damages for violations of that Section, which imposes duties on labor organizations similar to the duties imposed upon them in Section 8(b). (H. Rep. No. 510, 80th Cong., 1st Sess., p. 52). Since an injunction issued by a district court pursuant to Section 10(1) would prevent alleged unfair labor practices from continuing, it was no longer appropriate to describe the Board's power to prevent unfair labor practices as "exclusive." But by retaining the provision that the Board's power to prevent unfair labor practices "shall not be affected by any other means of * * * prevention that has been or may be established by * * * law * * *" (Section 10(a)), Congress made it clear that it did not intend the district courts to exercise, in connection with the issuance of interlocutory

injunctions against alleged unfair labor practices, the power vested in the Board to decide whether unfair labor practices had been committed. For, if the district courts decided that question in a suit by a regional officer on behalf of the Board, in which both the alleged violator and the person filing the charge were parties, the decision of the district court, on familiar res judicata principles, would be binding upon the Board in the unfair labor case pending before it. See, e. g., Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381, 402-403; George H. Lee Co. v. F. T. C., 113 F. 2d 583 (C. C. A. 8; [37] U. S. v. Willard Tablet Co., 141 F. 2d 141; Tait v. Western Md. Ry. Co., 289 U. S. 620; Mitchell v. First Nat'l Bank, 180 U. S. 471; New York State Labor Relations Board v. Holland, 294 N. Y. 480, 63 N. E. 2d 68. Such an exercise of jurisdiction by a district court would "affect" the power of the Board to remedy unfair labor practices in a most drastic fashion. In sum, Congress contemplated, as the Committee report quoted above indicates, that district courts under Section 10(1) would, pending the determination of the issue by the Board on the merits, enjoin "alleged" unfair labor practices, under Section 8(b) 4, provided there is reasonable cause to believe the allegations of the charge to be true, and that only the Board, subject to review by the Circuit Courts of Appeals, would decide the question of the truth of the charges, and issue appropriate "final orders" as provided in Section 10(e). The provision of Section 10(1) which provides for the expiration of any relief which may be granted by district courts upon "final adjudication by the Board with respect to such matter," further demonstrates that only the Board, and not district courts, was empowered, in cases arising out of charges filed with the Board alleging violations of Section 8(b) 4, to decide

whether, in fact and in law, unfair labor practices had been committed. Consequently, if this Court is satisfied that the Regional Director's belief that the charge is true and a complaint should issue, is reasonable, an injunction should be issued as prayed.

B. Upon the investigation made, the Regional Director has reasonable cause to believe that the charge herein involved is true and that a complaint should issue thereon

1. The Regional Director has reasonable cause to believe that the unfair labor practices charged affect commerce within the meaning of Section 2(6), (7), and 10(a) of the Act.

The Regional Director, upon information obtained through his investigation, believes that the unfair labor practices charged affect commerce. Sealright, the charging party, is engaged at Los Angeles, California in the manufacture, sale and distribution of paper food containers. In the course of its business it purchases and causes to be transported to its Los Angeles plant from points outside California various materials valued at an excess of [38] $1,000,000 annually. It ships various products to points outside California valued at an excess of $500,000 annually. The unfair labor practices with which respondents are charged tend to interrupt the business of Sealright. On the basis of the applicable authority, the Regional Director's belief that Sealright is engaged in commerce within the meaning of the Act and that the unfair labor practices charged affect commerce within the meaning of the Act is reasonable. N. L. R. B. v. Fainblatt, 306 U. S. 601; N. L. R. B. v. Santa Cruz Fruit Packing Co., 303 U. S. 453; N. L. R. B. v. Sub-

urban Lumber Co., 121 F. 2d 829 (C. C. A. 3), certiorari 322 U. S. 754; Brandeis & Sons v. N. L. R. B., 142 F. 2d 977 (C. C. A. 8), certiorari denied, 323 U. S. 815; N. L. R. B. v. Van de Kamp's Holland-Dutch Bakers, 152 F. 2d 818 (C. C. A. 9); of. Wickard v. Filburn, 317 U. S. 111, 118-129.

2. The Regional Director has reasonable cause to believe that the charge against respondents is true.

The investigation of the charges herein made by the Regional Director discloses the following substantially undisputed facts: On or about November 3, 1947 Local 388 called a strike of its members, employed by Sealright, in support of the demands of Local 388 with respect to terms and conditions of employment. On about November 13, 1947 respondent Turner, Secretary-Treasurer of Local 388, advised the Los Angeles Seattle Motor Express, Inc. (hereinafter called L. A. Seattle), a common carrier which has transported Sealright's products, that if L. A. Seattle continued to handle Sealright's products, Local 388 would picket Sealright products handled by L. A. Seattle On about November 14, 1947 representatives of Local 388 formed a picket line around two trucks loaded with Sealright's products at the terminal of L. A. Seattle. Said representatives informed the employees of L. A. Seattle that the trucks contained hot cargo and told or requested them not to handle it. After November 14, as a result of said picketing by Local 388, the employees of L. A. Seattle refused to transport or handle the goods of Sealright. On about November 17, Local 388 placed a picket line around three freight cars at the docks of West Coast Terminals Co., Long Beach, California (hereinafter called West Coast) upon which rolls of paper consigned to Sealright were being loaded.

As a result of [39] the foregoing conduct of Local 388, and the continued picketing by Local 388 of the docks of West Coast, the employees of West Coast have refused to handle or work on the goods consigned to Sealright. Local 388 is engaged in the conduct summarized above to force or require L. A. Seattle and West Coast to cease handling or transporting the products of Sealright.

On the basis of the foregoing facts there is reasonable cause for petitioner to believe that a violation of Section 8(b) 4(A) has been committed as charged and that a complaint should issue.

Section 8(b) 4(A) of the Act provides that

(b) It shall be an unfair labor practice for a labor organization or its agents—(4) to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or comodities, or to perform any services, where an object thereof is

(A) forcing or requiring any employer or other person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

Petitioner believes that respondents by picketing the goods of Sealright at L. A. Seattle and West Coast have induced and encouraged the employees of L. A. Seattle and West Coast to engage in a concerted refusal in the course of their employment to transport or handle the goods of Sealright, an object thereof being to force or

require L. A. Seattle and West Coast to cease handling or transporting the products of Sealright and that respondents have thereby violated Section 8(b) 4(A) of the Act. This belief, we submit, is clearly reasonable.

C. Upon the foregoing showing, an order which enjoins respondents, pending final adjudication of the charges by the Board, from [40] engaging in the illegal conduct charged, is just and proper

Section 10(1) embodies the determination of Congress that the continued disruption of interstate commerce by acts which, there is reasonable cause to believe, were perpetrated in violation of Section 8(b) 4, is unjustified and contrary to national policy. Congress placed a mandatory duty upon the officer or regional attorney investigating a charge of violation of Section 8(b) 4 to seek injunctive relief if he believes that a violation has occurred. Congress further declared that "just and proper" injunctive relief should be granted if the Court finds that the officer or regional attorney had reasonable cause to believe that a violation has occurred.

Under these circumstances the propriety of injunctive relief turns not upon traditional equity criteria applicable in suits between private parties, but upon the necessity for effectuating the statutory policy. The Hecht Company v. Bowles, Administrator, 321 U. S. 321, 331. It is well settled that where Congress sets the standard for the issuance of injunctions, those standards, and no others, need be satisfied to obtain injunctive relief. S. E. C. v. Jones, 85 F. 2d 17 (C. C. A. 2); S. E. C. v. Torr, 87 F. 2d 446 (C. C. A. 2); American Fruit Growers v. United States, 105 F. 2d 722 (C. C. A. 9); U. S. v.

Adler's Creamery, Inc., 110 F. 2d 482 (C. C. A. 2); Douds, Reg. Dir. v. Wine etc. Union, ... F. Supp. ...., C. C. H. 13 Labor Cases § 64, 186 (D. Ct. S. D. N. Y.).

The scope of the order sought by the Regional Director in the instant case falls well within the "just and proper" criteria established by the Act. The order sought is directed only against the labor organizations and its agents charged with having committed unfair labor practices, and against persons acting in concert with them. N. L. R. B. v. Regal Knitwear Co., 140 F. 2d 746 (C. C. A. 2). The conduct sought to be enjoined is limited to the acts respondents have been charged with committing and to similar acts in violation of Section 8(b) 4. Cf. N. L. R. B. v. Express Publishing Co., 312 U. S. 426; N. L. R. B. v. May Department Stores Co., 326 U. S. 376; N. L. R. B. v. Cheney California Lumber Co., 327 U. S. 385. The order is drawn to prevent a specific evil which Congress desired to eradicate and is therefore clearly warranted under the Act. [41]

III. The Constitution Presents No Bar to the Relief Sought Here

Respondents assert in their motion to dismiss the petition that the picketing engaged in by Local 388 is constitutionally protected and that the relief sought by petitioner infringes the First Amendment's guarantee of freedom of speech, the Fifth Amendment's guarantee of liberty, and the Thirteenth Amendment's prohibition of involuntary servitude.

At the outset it is important to note that whatever the rights of employees may be to leave work individually or in concert or to work on any terms they may themselves choose, those rights are in no way affected by the order

which petitioner here seeks. Neither the refusal of the employees of L. A. Seattle nor that of the employees of West Coast to handle or transport the goods of Sealright constitutes any part of the unfair labor practices which petitioner believes, and has alleged, respondents have committed. The statute does not make it an unfair labor practice for employees voluntarily to cease work for any purpose. Employees as such are not subject to the unfair labor practice provisions of the Act. Congress has thus avoided any possible challenge to the Act which might be predicated upon the Thirteenth Amendment.

The unfair labor practice alleged in the petition and against which the order sought is directed is respondents' action in inducing and encouraging, by means of the picket lines established by Local 388, the employees of L. A. Seattle and West Coast to engage in a concerted refusal in the course of their employment to handle or transport the goods of Sealright, an object thereof being to compel or require West Coast and L. A. Seattle to cease transporting or handling the goods of Sealright.

It follows that the only constitutional question which can be presented here is whether respondents can lawfully be enjoined from encouraging and inducing the employees of L. A. Seattle and West Coast by means of picketing, or any other like acts or conduct, not to handle or transport the goods of Sealright where an object thereof is to compel L. A. Seattle and West Coast to cease handling or transporting the products of Sealright.

Congress, we submit, may, without infringing constitutional guarantees, [42] enjoin picketing such as that engaged in by respondents in the instant case.

In the National Labor Relations Act Congress created a mechanism for the determination of the basic question

whether an employer was required to bargain collectively with a labor organization which sought to represent his employees. Essential to this statutory scheme was the concept of an appropriate bargaining unit generally composed of employees employed by a single employer. It was within this group that Congress sought to vest the power to make the determination whether or not to bargain and by clear implication it was to this group that Congress sought to extend the right, by engaging in concerted activities against their employer, to better their wages, hours and working conditions. In other words, Congress adopted the basic principle that industrial disputes over unionization, wages, hours, and working conditions were to be resolved by the employees in the appropriate bargaining unit on one side and their employer on the other. This principle was not realized under the National Labor Relations Act. Accordingly, Congress addressed itself to this problem in considering amendments to the National Labor Relations Act and by enacting Section 8(b) 4(A) it sought to localize industrial conflict between employees and their immediate employer by prohibiting labor organizations or their agents from inducing or encouraging the employees of any employer to engage in a concerted refusal in the course of their employment to perform services where an object thereof was to force or require that employer to cease doing business with any other person. In other words, Congress sought to prohibit a labor organization from conscripting the aid of employees and through them of their employer who had no immediate relation to a labor

dispute in order to bring pressure to bear upon an employer with whom the labor organization had a dispute over terms and conditions of employment. A familiar weapon used by labor organizations in conscripting such aid and pressure is the picket line placed at the place of business of the neutral employer and calculated, among other things, to induce or encourage his employees to cease handling the products of the employer with whom the labor organization sponsoring the picketing is having difficulties. In proscribing such picketing and thereby narrowing the permissible area of [43] industrial conflict, we believe that Congress did not transgress constitutional limitations.

It has been stated that peaceful picketing may be a phase of the constitutional right of free speech. But, as the Supreme Court has pointed out, even peaceful picketing, which is a form of coercive technique, is subject to regulation in the public interest on any reasonable basis. Carpenters and Joiners Union of America v. Ritters Cafe, 315 U. S. 722; Bakery and Pastry Drivers v. Wohl, 315 U. S. 769, 775, 776; Stapleton v. Mitchell, 60 F. Supp. 51, 58-59.

The Act was enacted by Congress, in the exercise of its power to regulate commerce, to protect "the normal flow of commerce and to present practices" which jeopardize the public health, safety, or interest." Sec. 1 of the Act. And as the Supreme Court stated in N. L. R. B. v. Jones & Laughlin, 301 U. S. 1, 36-37: "The power to regulate commerce is the power to enact all appropriate legislation 'for its protection and advancement' (Daniel Ball, 10

Wall. 557, 561); to adopt measures 'to promote its growth and to insure its safety' (Mobile County v. Kimball, 102 U. S. 691, 696, 697); to foster, protect, control and restrain' (Simond Employers Liability Cases, 223, U. S. 1, 47) * * * That power is plenary and may be exerted to protect interstate commerce no matter what the source of dangers which threaten it." In the exercise of this broad power Congress under Section 8(b) 4 has sought to make unlawful incitation to economic coercion including what is commonly called a secondary boycott. The power of Congress to protect interstate commerce and the public interest from the harmful effects of such boycott cannot be seriously questioned. Duplex v. Deering, 254 U. S. 443.

The use of weapons, including picketing, to accomplish a substantive evil forbidden by a valid act of Congress can be made illegal. And we submit, the right peacefully to picket loses its constitutional protection against legislative or judicial infringement when it is, as here, part of a course of conduct calculated to accomplish the evil forbidden by Congress in Section 8(b) 4(A) of the Act. Cf. Carpenters and Joiners Union v. Ritter, 315 U. S. 722. [44]

Section 8(c) of the Act does not immunize respondents' conduct. Section 8(c) provides that,

> The expressing of any views, arguments, or opinion, or the dissemination thereof * * * shall not constitute or be evidence of an unfair labor practice under any provision of this Act, if such expression contains no threat of reprisal or promise of benefit.

A picket line is more than the expression of views, arguments or opinion. It is, as even respondents' counsel conceded at the oral argument, a coercive technique designed to bring pressure to bear upon, among others, employees so that they will align themselves with the picketing group and aid in advancing its interests. Ritter, Wohl and Stapleton, cases, supra.

Respondents assert that Section 8(b) 4(A) is vague, indefinite, and uncertain and therefore violative of due process of law. We submit that in view of Section 8(c) of the Act in conjunction with which Section 8(b) 4(A) must be read, "the language Congress used provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges—fairly to administer in accordance with the will of Congress" N. S. v. Petrillo, 67 S. Ct. 1538.

The Court, at the oral argument, raised the question whether these proceedings should be heard by a three judge court pursuant to the provisions of Title 28, Sec. 380a of the Judicial Code. That section provides that "no interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the

same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge." This section, we believe, does not as shown by its express language apply to the instant proceedings. The instant [45] proceedings are before the Court upon the petition of the Board's Regional Director at Los Angeles for injunctive relief against the unfair labor practices with which respondents are charged. The circumstance that respondents have moved to dismiss the petition on constitutional grounds does not transform the instant proceedings into the type of proceedings contemplated by the above-mentioned section of the Judicial Code.

Respectfully submitted,

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January 2, 1947.

[Endorsed]: Filed Jan. 3, 1948. Edmund L. Smith, Clerk. [46]

[Title of District Court and Cause]

RESPONDENTS' SUPPLEMENTARY MEMORANDUM OF POINTS AND AUTHORITIES [47]

I.

Statement of the Issues

A. The Undisputed Facts

Fairly construed and with conclusions of law eliminated, the petition herein merely charges respondents with picketing and threatening to picket the products of the employer with whom a labor dispute is pending.

A consideration of the petition and the uncontroverted affidavit of respondent Walter J. Turner filed in this proceeding reveals the undisputed facts to be as follows:

(1) On or about November 3, 1946 Local 388 called a lawful strike of its members, employed by Sealright Pacific, Ltd., in support of the demands of Local 388 for wages and holiday pay more nearly comparable to the prevailing union standards in the paper converting industry in this area, than the final offer made by Sealright after extended collective bargaining negotiations;

(2) At some time between November 3, 1947 and November 17, 1947 respondent Turner, Secretary-Treasurer of Local 388, advised the Los Angeles-Seattle Motor Express, Inc. that Local 388 was engaged in a strike due to a wage dispute with Sealright Pacific, Ltd., and intended to peacefully picket Sealright's products manufactured under strike conditions and at substandard wages for the purpose of publicizing the dispute and solicit-

ing the assistance of other workers asking that they decline to handle this merchandise.

(3) On or about November 14, 1947 members of Local 388 on strike at Sealright Pacific, Ltd. formed a peaceful picket line around two trucks loaded [48] with Sealright's products at the terminal of L. A. Seattle, and informed the trucking concern's employees that the Sealright products were manufactured under strike conditions and for substandard wages, or that the products were "hot cargo," and solicited them not to handle the same.

(4) On or about November 17, 1947 Local 388, peacefully picketed Sealright products being loaded onto three freight cars located at a siding adjacent to the warehouse of the West Coast Terminals Company, Long Beach, California, which products consisted of rolls of paper consigned from a New York plant of Sealright Pacific, Ltd. to the Los Angeles plant of the struck concern for use in continued manufacturing operations.

(Compare Petitioner's Memorandum, pp. 9-10.)

As in the similar case of Bakery Wagon Drivers Local v. Wohl, 315 U. S. 769, 776, the record here does not contain the slightest suggestion that the picketing was anything but completely peaceful. Counsel for petitioner conceded at the hearing upon the order to show cause on December 30, 1947 that the picketing sought to be prevented herein was peaceful, and apparently did not dispute respondents' denial that any threat of reprisal or force accompanied the picketing activity complained of. No circumstances have been charged from which the inference might be drawn that the picketing was attended

or likely to be attended by violence or force, or conduct otherwise unlawful or oppressive; and it is not indicated that there was any actual or threatened abuse of the right to free speech through the use of excessive picketing.

B. The Contentions of Petitioner

Petitioner's contentions as expressed through oral argument on December 30, 1947 and in his Memorandum, may be summarized as follows: [49]

(1) The Respondents' challenge to the jurisdiction of this Court in this proceeding is disposed of by Section 10(1) of the amended Act, since the constitutionality of such a Congressional enactment under the "Commerce Power" is not open to question.

(2) The function of this Court in this proceeding is limited by Congress to the issuance of injunctions upon the application of Board agents as an ancillary remedy to assist the National Labor Relations Board in exercising its exclusive power to adjudicate unfair labor practice charges.

(3) The absolute right of a Board agent to injunctive relief in proceedings such as the instant case is conditioned only upon a determination that "reasonable cause" exists for his stated belief that an unfair labor practice has been committed; however, the Court is not entitled to require prima facie evidence of facts forming the basis for the Board agent's belief in making such determination.

(4) The First, Fifth and Thirteenth Amendments to the Constitution present no bar to the relief sought here, namely to localize the dispute between the

members of respondent Union and the charging Employer by enjoining respondent Union and its representatives, and all persons in active concert or participation with them, from picketing the products of the struck concern. [50]

II.

Congress Cannot Preclude This Court From Passing on the Validity of a Statutory Provision Purporting to Confer Jurisdiction to Grant Relief Contrary to the First Amendment

Counsel for petitioner seeks to preclude this Court from passing on the validity of Section 8(b) (4) (A) of the amended Act, as incorporated in Section 10(1) thereof, by asserting the following legal propositions:

(1) This Court received a grant of jurisdiction over this proceeding under Section 10(1); (Petitioner's Memorandum, p. 2, lines 19-20).

(2) The constitutionality of the amended Act as an exercise of the power of Congress to prevent and mitigate interruptions to interstate commerce arising out of labor disputes which affect such commerce is not open to question. (Petitioner's Memorandum, p. 2, lines 22-25, and p. 14, lines 10-25, citing N. L. R. B. v. Jones & Laughlin Steel Co., 301 U. S. 1 and Duplex v. Deering, 254 U. S. 443.)

(3) The jurisdiction conferred upon this Court by Section 10(1) is entirely statutory, and is not limited in any manner other than the limitations contained in the Act itself. (Petitioner's Memorandum, p. 4, lines 15-17.)

Insofar as counsel seeks to establish by these legal arguments that Congress has the power to regulate interstate commerce by preventing dangerous interruptions thereto, subject to the limitations of the First Amendment, there can be no disagreement. If, however, the contention is being made that this "plenary power" may be exercised without regard for the guarantees of the right of free speech and assembly, we must express strong disagreement with so destructive a concept of constitutional law.

The Jones & Laughlin case 301 U. S. 1, upholding the validity of the [51] original National Labor Relations Act of 1935, did not involve the right of free speech and assembly under the First Amendment. There a corporate employer unsuccessfully invoked the "due process clause" of the Fifth Amendment and the right of trial by jury contained in Article III, Section 2 of the Constitution and the Seventh Amendment, in support of its attack upon the Act.

The invasion of free speech contained in Section 8(b)(4)(A) is also sought to be justified on the authority of an early decision that the so-called secondary boycott lay within the purview of the Sherman Act (Duplex Printing Co. v. Deering, 254 U. S. 443), decided a quarter-century ago before "the modern trend of decision" identifying picketing with free speech and assembly.

See dissenting opinion of Mr. Justice Brandeis in the Duplex case, 254 U. S. at 481, wherein he queried:

> "May not all with a common interest join in refusing to expend their labor upon articles whose very production constitutes an attack upon their standard of living and the institution which they are convinced supports it?"

He also pointed out (254 U. S. at 482) that:

> ". . . courts, with better appreciation of the facts of industry, recognized the unity of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself."

Six years later, dissenting in Bedford Stone Co. v. Journeymen Stone Cutters Association of North America, 274 U. S. 37, he said:

> ". . . If, on the undisputed facts of this case, refusal to work can be enjoined, Congress created by the Sherman Law and the Clayton Act an instrument for imposing restraints upon labor which reminds one of involuntary servitude."

We submit that a worker is free, whether "privileged under congressional enactments" or not, "acting either alone or in concert with his fellow workers, to associate or refuse to associate with other workers, to accept, refuse to accept, or to terminate a relationship of employment" (Hunt v. Cromboch, 325 U. S. 821) and that "the publication unaccompanied by violence of a notice that the employer is unfair to organized labor and requesting the public not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress." (See concurring [52] opinion of Chief Justice Stone in United States v. Hutcheson, 312 U. S. 219 at 243.)

III.

The Threat to Free Speech and Assembly Under Section 8(b) (4) (A) Is Heightened Under Petitioner's View of the Limited Discretion Afforded This Court in Performing an Ancillary Function to the Board's Adjudicative Powers Under Section 10

Petitioner contends "the sole prerequisite to the granting of injunctive relief (under Section 10(1)) is a finding by this Court that the Regional Director has reasonable cause to believe that the charge is true and a complaint should issue." (Petitioner's Memorandum, p. 5, lines 1-3.)

"The propriety of such injunctive relief," petitioner further contends, "turns not upon traditional equity criteria applicable in suits between private parties, but upon the necessity for effectuating the statutory policy." (Petitioner's Memorandum, p. 11, lines 11-13.)

Again, "It cannot be contended that this Court is called upon to decide whether in fact the charge is true, or whether a violation has, in fact, been committed." (Petitioner's Memorandum, p. 5, lines 3-5.)

In short, the argument is made by petitioner that the court is required to grant relief upon a petition in compliance with the bare provisions of Section 10(1) as a matter of course, with judicial discretion limited to the scope and extent of the relief granted. It might be expected, rather, that judicial discretion under traditional equity principles, requiring a showing of irreparable injury and the absence of an adequate remedy at law, would be

afforded the Court in view of the nature of the acts proscribed by Section 8(b) (4) of the amended Act.

Petitioner implies that the showing necessary for an injunction against engaging in a strike or concerted refusal to work, or "inducing or encouraging" others to do so need not be any greater than that required for an administrative agency to invoke the assistance of the Court to enforce a subpoena issued in the course of an official investigation. (Petitioner's Memorandum, p. 6, lines 2-11, citing I. C. C. v. Brimson, 154 U. S. 447; Endicott Johnson Corp. v. Perkins, [53] 317 U. S. 501, and other "subpoena enforcement" cases.)

Moreover, the cases cited by petitioner for the proposition that traditional equity criteria do not apply to the issuance of so-called interlocutory injunctive relief ancillary to an administrative determination do not hold that way at all.

Hecht Company v. Bowles, 321 U. S. 321, involved an application of the OPA Administrator for an injunction under the Emergency Price Control Act against alleged violations of that Act. The trial court denied injunctive relief for want of equity. (49 Fed. Supp. 528.) The United States Circuit Court of Appeals for the District of Columbia reversed on the grounds that the Administrator was entitled to injunctive relief as a matter of course. (137 F. (2d) 689.) The Supreme Court reversed that decision and remanded to the Circuit Court of Appeals to determine whether the trial court had "abused its discretion." Mr. Justice Douglas speaking for the Court says in part:

> ". . . Only the other day we stated that 'An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion

which guides the determinations of courts of equity.' . . . We do not believe that such a major departure from that long tradition as is here proposed should be lightly implied. . . . Hence we resolve the ambiguities of §205(a) in favor of that interpretation which affords a full opportunity for equity proceedings under this emergency legislation in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress has sought to protect."

(321 U. S. 329-330)

Douds v. Wine Workers' Union (D. Ct., S. D. N. Y., decided December 11, 1947), ... Fed. Supp. ....., 13 C. C. H. Labor Cases pgh. 64,186, 21 LRRM 2120, involved the granting of a five-day temporary restraining order under Sections 8(b) (4) (A) and 10(1) of the amended Act, but any statement therein with regard to the exclusive and controlling character of statutory standards for obtaining injunctive relief is pure dictum, since it was found by the Court that "substantial and irreparable injury to the charging parties will be unavoidable unless a temporary restraining order issues," and "the traditional equity criteria applicable in suits between private parties" were held to be present. Moreover the Douds decision misstates the holding in the Hecht Company case, supra, and [54] cites it for the reverse of the actual holding, in the same manner as petitioner herein.

Such an expression obiter dictum by the judge in the Douds case deserves to be accorded less weight than the statements on the subject in Styles v. Local 74, Carpenters & Joiners (D. Ct., E. D. Tenn., decided October 28, 1947), ... Fed. Supp. ....., 13 C. C. H. Labor Cases

pgh. 64,093, 21 LRRM 2010, denying injunctive relief under Sections 8(b) (4) (A) and 10(1) of the amended Act for want of "an existing condition that would warrant the issuance of an injunction as being just and proper," and lack of "a fair anticipation of future violations." There District Judge Darr announced:

> "The provisions of the Act concerning the injunction give to the court authority to issue such extraordinary process 'as it deems just and proper.' Therefore it would seem that the situation should be such as to disclose some immediate urgency of action whereby the right of a citizen would have temporary protection pending the proceedings of the controversy upon its merits."

IV.

The Portion of the Statute Which Respondents Attack as Unconstitutional Being Clearly an Attempted Abridgment of the Right of Free Speech, Is Not Protected by the Usual Presumption of Constitutionality

The Supreme Court of the United States in a case in which a statute of the State of Texas was not permitted to contravene rights secured by the First Amendment, said:

> "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable

democratic freedoms secured by the First Amendment. . . . That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice." (Emphasis supplied.)

Thomas v. Collins, 323 U. S. 516 at 529

Cited with approval in In re Porterfield, 28 Cal. (2d) 91, 168 Pac. (2d) 705.

And, to the same effect: [55]

"There may be a narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See Stromberg v. Carlson, 283 U. S. 359, 369, 51 Sup. Ct. 532, 535, 536, 75 L. Ed. 1117, 73 A. L. R. 1484; Lovell v. Griffin, 303 U. S. 444, 58 Sup. Ct. 666, 82 L. Ed. 949, decided March 28, 1938."

U. S. v. Carolene Products Co., 304 U. S. 778 at 783 (Note 4)

"We mention these constitutional provisions not to stir the constitutional issues which have been argued at the bar but to indicate the approach which we think should be made to an order of the Chief Executive that touches the sensitive area of rights specifically guaranteed by the Constitution. This Court has quite consistently given a narrower scope for the operation of the presumption of constitutionality when legislation appeared on its face to

violate a specific prohibition of the Constitution." (Emphasis supplied.)

Ex Parte Mitsuye Endo, 323 U. S. 283 at 299

"The right to jury trial and the other constitutional rights of an accused individual are too fundamental to be sacrificed merely through a reasonable fear of military assault. There must be some overpowering factor that makes a recognition of those rights incompatible with the public safety before we could consent to their temporary suspension. If those rights may safely be respected in the face of threatened invasion no valid reason exists for disregarding them."

Duncan v. Kahanamoku, 66 Sup. Ct. 606 at 618 (Concurring Opinion) Hawaiian Martial Law, January 1946

See also:

Prince v. Massachusetts, 321 U. S. 158 at 167

Schneider v. New Jersey, 308 U. S. 147 at 161

These recent decisions of the Supreme Court represent the culmination of the doctrine suggested by Mr. Justice Holmes in Schenck v. United States (249 U. S. 47, 52) and amplified by the concurring opinion of Mr. Justice Brandeis in Whitney v. California, 274 U. S. 357, 374. The latter opinion emphasized:

". . . although the rights of free speech and assembly are fundamental, they are not in their nature absolute. Their exercise is subject to restriction, if the particular restriction proposed is required in order to protect the state from destruction or from serious injury, political, economic or moral." [56]

However, the learned jurist quickly added that "Fear of serious injury cannot alone justify suppression of free speech and assembly."

In West Virginia State Board of Education v. Barnette, 319 U. S. 624 at 639, the Supreme Court stated:

> "The right of a State to regulate, for example a public utility, may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adoping. But freedom of speech and press, of assembly and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."

V.

The Right of Peaceful Picketing Is Guaranteed Under the First Amendment as Constituting the Right of Free Speech

Senn v. Tile Layers' Protective Union, 301 U. S. 468, 478:

> "Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

Carlson v. California, 310 U. S. 106, 112, 113

Cafeteria Employees Union v. Angelos, 302 U. S. 293 at 295

Thornhill v. Alabama, 310 U. S. 88, 102, 104

American Federation of Labor v. Swing, 312 U. S. 321 at 325, 326

In re Blaney, 30 A. C. 648

As elsewhere pointed out herein, the ruling cases upholding the right of peaceful picketing, including those mentioned above, refer to picketing for the purpose of inducing action on the part of other persons. In Thornhill v. Alabama, after holding that the picketing therein sought to be enjoined, which consisted of picketing for the purpose of boycott, is protected by the First Amendment as the right of free speech, the Court goes on to say, at 310 U. S. 104:

> "It may be that effective exercise of the means of advancing public knowledge may persuade some of those reached to refrain from entering into advantageous relations with the business establishment which is the scene of the dispute. Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society."

The Supreme Court in this language effectually answers the contention of [57] Petitioner herein that peaceful picketing may be outlawed because it may result in damage to the business of another party.

VI.

The Personal Rights Secured by the First Amendment Occupy a Preferred Position and Are Not Judged by the Same Constitutional Principles Which Govern Property Rights

> "When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. As we have stated before, the right to exercise the liberties safe guarded

by the First Amendment 'lies at the foundation of free government by free men' and we must in all cases 'weigh the circumstances and appraise . . . the reasons . . . in support of the regulation of (those) rights. Schneider v. State, 308 U. S. 147, 161, 60 Sup. Ct. 146, 151, 84 L. Ed. 155."

Marsh v. Alabama, 326 U. S. 501, 509

In Follett v. Town of McCormick, 321 U. S. 573, the Supreme Court in annulling an ordinance purporting to fix a license fee for the sale of books, where the ordinance was sought to be applied to the sale of religious literature, the Court said at page 576:

"We pointed out in the Murdock case that the distinction between 'religious' activity and 'purely commercial' activity would at times be 'vital' in determining the constitutionality of flat license taxes such as these. 319 U. S. page 110, 63 Sup. Ct. page 873, 87 L. Ed. 1292, 146 A. L. R. 81. But we need not determine here by what tests the existence of a 'religion' or the 'free exercise' thereof in the constitutional sense may be ascertained or measured. For the Supreme Court of South Carolina conceded that 'the book in question is a religious book'; and it concluded 'without difficulty' that 'its publication and distribution come within the words, "exercise of religion," as they are used in the Constitution.' We must accordingly accept as bona fide appellant's assertion that he was 'preaching the gospel' by going 'from house to house presenting the gospel of the kingdom in printed form.' Thus we have quite a different case from that of a merchant who sells books on a stand or on the road."

See also:

Tucker v. Texas, 326 U. S. 517 at 520

In the Thomas case, 323 U. S. 516 at 529, the Court reaffirmed the views expressed in the Thornhill case, supra, that the power of the state to regulate labor relations must not trespass upon the domains set apart for [58] free speech and free assembly, saying:

> "Where the line shall be placed in a particular application rests . . . on the concrete clash of particular interests and the community's relative evaluation of both of them and of how the one will be affected by the specific restriction, the other by its absence. That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition. Schneider v. State, 308 U. S. 147, 161. The answer, under that tradition, can be affirmative to support an intrusion upon this domain, only if grave and impending public danger requires this." (Emphasis supplied.) [59]

VII.

The Power of a Legislative Body to Pass Legislation for the Prevention of Violence and for General Regulation of Industrial Relations Is Strictly Limited by the Provisions of the Bill of Rights

Hotel & Restaurant Employees Local v. Employment Relations Board, 315 U. S. 437, where the Supreme Court said, at page 442:

> "What public policy Wisconsin should adopt in furthering desirable industrial relations is for it to

say so long as rights guaranteed by the Constitution are respected."

A. F. of L. v. Swing, 312 U. S. 321, where the Supreme Court said, at 325 and 326:

"We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

"Such a ban of free communication is inconsistent with the guarantee of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. (Emphasis supplied.) A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. American Foundries v. Tri-City Council, 257 U. S. 184, 209, 42 Sup. Ct. 72, 78, 66 L. Ed. 189, 27 A. L. R. 360. The right of

free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ."

In discussing the right of free speech in connection with the right of assembly, and disapproving what might be deemed a mild abridgment, the Supreme Court recently said:

"The restraint is not small when it is considered what was restrained. The right is a national right, federally guaranteed. There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all [60] together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in the soil grow great and, growing, break down the foundations of liberty."

Thomas v. Collins, 323 U. S. 516 at 543

In Senn v. Tile Layers, 301 U. S. 468, the Supreme Court said at page 478:

"The state may, in the exercise of its police power, regulate the methods and means of publicity as well as the use of public streets. If the end sought by the unions is not forbidden by the Federal Constitution, the state may authorize workingmen to seek to attain it by combining as pickets, just as it permits capitalists and employers to combine in other ways to attain their desired economic ends."

The corollary of this same thought was reiterated in Thornhill v. Alabama, 310 U. S. at 103, namely that:

> "It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. . . . It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern."

And again, in the Carlson case, 310 U. S. at 113, the Supreme Court declared:

> "The power and duty of the State to take adequate steps to preserve the peace and protect the privacy, the lives, and the property of its residents cannot be doubted. But the ordinance in question here abridges liberty of discussion under circumstances presenting no clear and present danger of substantive evils within the allowable area of State control."

Such pronouncements of the high court were considered by the Supreme Court of California in the Blaney case decided October 3, 1947, 30 A. C. 648 at 653, which interpreted them to mean that although the purpose of the economic pressure exerted by a labor organization against an employer and the means used to exert it must be lawful. "the question still remains as to what purposes or means may be declared unlawful by the Legislature or the courts without violating the provisions of the Constitution." [61]

In other words, the guarantees of the First Amendment cannot be abridged by legislative action, by municipality, state or the Nation itself. The attempt by the Taft-Hartley Act to prevent a union engaged in a labor dispute with its employer from picketing the product of that employer must be disapproved and annulled, as was the similar attempt by the State of California in the Blaney case, supra, or the State of New York in the Wohl case, supra.

Similarly, the attempt by means of the Taft-Hartley Law, to draw "the circle of economic competition between employers and workers so small as to contain only an employer and those employed directly by him," must be judicially disapproved and set aside as was the similar attempt of the State of Illinois in A. F. of L. v. Swing, supra, and the State of New York in Cafeteria Employees Union v. Angelos, supra.

VIII.

The Right of Picketing Is Protected by Definite Guarantees and Is Controlled by Definite Boundaries

(a) It must be in a dispute reasonably related to employment conditions.

Thornhill v. Alabama, 310 U. S. 88, 102, 103;

Carlson v. California, 310 U. S. 106, 112, 113;

A. F. of L. v. Swing, 312 U. S. 321, 326;

Cafeteria Employees Union v. Angelos, 320 U. S. 293, 295, 296;

McKay v. Retail Automobile Salesmen's Local Union, 16 Cal. (2d) 311, 318, 319;

Smith Metropolitan Market v. Lyons, 16 Cal. (2d) 389, 394.

(b) Picketing is not approved where it is outside of such a controversy reasonably related to employment conditions.

Dorchy v. Kansas, 272 U. S. 306, 311. (Picketing to enforce collection of a stale claim belonging to an individual.)

See:

James v. Marinship, 25 Cal. (2d) 721. (Did not involve picketing but concerned union pressure to preserve a closed shop and a closed union.)

See also:

Bautista v. Jones, 25 Cal. (2d) 746. (Same situation.) [62]

(c) The picketing must be within the economic nexus or context of dispute.

Carpenters and Joiners v. Ritters Cafe, 315 U. S. 722, 727. (Picketing of a product approved.)

Allen Bradley Local 1111 v. Wisconsin Employment Relations Board, 315 U. S. 740, 748. (Picketing the homes of strikebreaker employees disapproved.)

(d) The picketing must be peaceful.

Milkwagon Drivers v. Meadowmoor Dairies, 312 U. S. 287.

(e) Violent acts will be enjoined.

Hotel & Restaurant Employees Local v. Employment Relations Board, 315 U. S. 437, 441. (Mass Picketing—prevention of ingress and egress.)

Lisse v. Local Union, 2 Cal. (2d) 312, 321;

In re Bell, 19 Cal. (2d) 488, 504, 505.

(f) Picketing cannot be limited to a dispute between an employer and his own employees.

A. F. of L. v. Swing, 312 U. S. 321, 326;
Cafeteria Employees Union v. Angelos, 320 U. S. 293, 295, 296.

(g) Picketing within the boundaries thus set out is protected by the courts.

Bakery Wagon Drivers' Local v. Wohl, 315 U. S. 769, 773;
Carpenters' Union v. Ritter's Cafe, 315 U. S. 722, 727;
Stapleton v. Mitchell, 60 Fed. Supp. 51;
Restatement of Torts, Vol. 4, Secs. 798, 799;
Fortenbury v. Superior Court, 16 Cal. (2d) 405;
Park & Tilford Import Corp. v. Int'l. Brotherhood of Teamsters, 27 Cal. (2d) 599, 603, 608.

(h) A person dealing with an employer within such nexus is not a neutral.

Fortenbury v. Superior Court, 16 Cal. (2d) 405, 408;
Goldfinger v. Feintuch, 276 N. Y. 281, 11 N. E. (2d) 910.

In the Memorandum of Points and Authorities on behalf of petitioner herein, the constitutional question as to the right of free speech is touched upon very lightly indeed in three and a half pages beginning at the top of [63] page 12.

The acts sought to be enjoined here consist of peaceful picketing. The picketing is said to be for the purpose of inducing and encouraging certain action on the part of certain employees. The decisions of our highest courts which have upheld the right of peaceful picketing have

involved cases where the picketing was carried on for a definite purpose. In Thornhill v. Alabama, 310 U. S. 88, the terms of the statute of the State of Alabama purporting to prohibit peaceful picketing are set out at pages 91 and 92. The statute there does not prohibit picketing carried on as an afternoon's diversion or for the mere purpose of disseminating a piece of news. The statute prohibits picketing pursuant to a boycott to induce or influence members of the public not to patronize a certain establishment. That was the picketing referred to by the Supreme Court at page 95, as freedom of speech and of the press to be safeguarded in order that men may speak as they like on matters vital to them.

In Senn v. Tile Layers' Protective Union, 301 U. S. 468, the picketing which was referred to at page 478 as freedom of speech, guaranteed by the Federal Constitution, consisted of picketing to prevent a master tile layer from working as a journeyman in his own business and to "encourage and induce" or "compel," if you please, him to hire a journeyman.

In Cafeteria Employees' Union v. Angelos, 302 U. S. 293, the picketing was for the purpose of compelling the owners of a cafeteria who, according to their allegations, did all their own work and made use of no employees whatever, to hire members of the Union.

Similarly, in A. F. of L. v. Swing, 312 U. S. 321, the picketing was by members of a beauticians' union to compel the proprietor of a beauty shop to employ union members, there being at that time no union members in his employ.

The very frank admission by counsel for the petitioner at page 13 of the memorandum, lines 11 to 14, to the effect that the intent of the Taft-Hartley Act is to limit the

area of the industrial dispute to a circle comprising only an employer and his own employees flies directly in the face of the consistent rulings of the Supreme Court of the United States, particularly the Angelos case, 320 U. S. at page 296 and the Swing case, 312 U. S. at pages [64] 325 and 326.

Furthermore, the picketing in the case at bar, as clearly shown by the charge and affidavit on file, was picketing directed at the product of the employer with whom the union is in dispute. Such picketing was expressly upheld in the Wohl case, 315 U. S. 769 (by a unanimous decision) which is expressly affirmed in Carpenters' Union v. Ritter's Cafe, 315 U. S. 722 at 727.

Counsel for petitioner in their very brief and sketchy citation of authorities, rely upon the Ritter's Cafe case, but they fail to consider page 727 of the decision which spells out the principle of law that the picketing of the product of a party to a labor dispute is within the allowable circle of economic action upheld under the First Amendment.

See also Fortenbury v. Superior Court, 16 Cal. (2d) 405, where the picketing of a product was upheld as a constitutional right under the rules laid down in the companion case of McKay v. Retail Automobile Salesmen's Local Union, 16 Cal. (2d) 311.

> "The First Amendment is a charter for government not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts.
>
> "Indeed, the whole history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that the protections are given.

"Accordingly, decision here has recognized that employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty. National Labor Relations Bd. v. Virginia Electric & P. Co., 314 U. S. 469. . . . When to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed. But short of that limit the employer's freedom cannot be impaired. The Constitution protects no less the employees' converse right. Of course espousal of the cause of labor is entitled to no higher protection than the espousal of any other lawful cause. It is entitled to the same protection."

Thomas v. Collins, 323 U. S. at 537.

See also Section 8(c) of the amended Act. [65]

IX.

The Relief Prayed For by Petitioner Is Designed to Curtail the Right of Workingmen to Combine For Their Mutual Protection by Restraining Various Concerted Activities, Including Peaceful Picketing and the Boycott, Thereby Requiring Involuntary Servitude Contrary to the Thirteenth Amendment

Petitioner's Memorandum argues that "Congress has . . . avoided any possible challenge to the Act which might be predicated upon the Thirteenth Amendment." Furthermore, "whatever the rights of employees may be to leave work individually or in concert or to work on any terms they may themselves choose, those rights are in no way affected by the order which petitioner seeks herein." (P. 12, lines 7-18.)

"The scope of the order" is defined by petitioner to be such that it "is directed only against the labor organization and its agents charged with having committed unfair labor practices, and against persons acting in concert with them." (P. 11, lines 22-24.)

Actually the proposed order would run against Local 388 and its Secretary-Treasurer, respondent Turner, "and their agents, servants, employees, attorneys and all persons in active concert or participation with them." ("Agent" is defined by Section 2(13) of the amended Act so that "the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling" in the determination of whether "any person is acting as an 'agent' or any other person." (Section 2(1) defines "person" as including inter alia "labor organizations" and "associations." The term "participation" as used in the proposed order is particularly significant in view of the definition of "labor organization" in Section 2(5) as a group "in which employees participate.")

The proposed order seeks to enjoin or restrain the above persons from themselves "engaging in . . . a concerted refusal to work, or strike in the course of their employment for the designated purposes described therein. Therefore, [66] how can it be said with any degree of sincerity that the relief prayed for would not enjoin or restrain concerted activities of union members.

In any event, the fallacious nature of any argument based upon the separation of any unincorporated voluntary association from its membership as a distinct entity is patent to say the least. Whatever may be the rule of law in a particular jurisdiction as to the right of the

union to sue in its own name or the liability of the union to be sued in such fashion, the ultimate enforcement of any injunctive order forbidding picketing must run against the individual members of the union, at least to the extent of denying the right to engage in "concerted activities."

See

Pollock v. Williams, 322 U. S. 4;
Bailey v. Alabama, 219 U. S. 210;
American Federation of Labor v. McAdory, 246 Ala. 1, 18 So. (2d) 810;
Henderson v. Coleman, 150 Fla. 185, 7 So. (2d) 117;
In re Blaney, 30 A. C. 648;
Stapleton v. Mitchell, 60 Fed. Supp. 51.

X.

Section 8(b) (4)(A) Is Void for Vagueness.

Petitioner relies upon an abridged quotation of Section 8(c) of the amended Act to defend Section 8(b) (4)(A) from the attack that it is so vague, indefinite and uncertain as to amount to a denial of due process of law contrary to the Fifth Amendment.

It is significant that petitioner has not responded to respondents' contention that the separability clause set forth in Section 16 of the amended Act cannot save the disputed Section 8(b) (4)(A) from being declared totally invalid, if in fact it is, as claimed, excessively vague or too sweeping in its terms.

Construing Section 8(c) and Section 8(b) (4)(A) together, it would seem to us that peaceful picketing as in the present case cannot be held to constitute an unfair labor practice, since such picketing "contains no threat of reprisal, or force or promise of (specific) benefit." If

the immunized utterances include "the expressing of any views, argument, or opinion, or the [67] dissemination thereof, whether in written, printed, graphic or visual form," we are firmly convinced that peaceful picketing must fall within that category. Yet, counsel for petitioner insists that because picketing is a "coercive technique" it is more than the expression of views, etc. and may be deemed to constitute or serve as evidence of an unfair labor practice. In effect, counsel seeks to turn back the hands of the clock and revive the early judicial pronouncements, long since overruled, that "there can be no such thing as peaceful picketing." (Atchison etc. v. Gee, 139 Fed. 582; see also Pierce v. Stablemen's Union, 156, Cal. 70, Rosenberg v. Retail Clerks' Assn., 39 Cal. App. 67, and Moore v. Cooks Union, 39 Cal. App. 538, all expressly renounced in Lisse v. Local Union, 2 Cal. (2d) 312, and McKay v. Retail Automobile Salesmen's Local Union, 16 Cal. (2d) 389.

If petitioner is upheld in his contention that peaceful picketing may constitute or serve as evidence of an unfair labor practice under Section 8 of the amended Act, then those portions of said amended Act are so vague that men of common intelligence must necessarily differ as to their meaning. Lanzetta v. New Jersey, 306 U. S. 451.

The statute held not subject to this objection in United States v. Petrillo, 67 Sup. Ct. 1538, 91 L. Ed. 1403, does not mention "picketing" as such in setting forth the proscribed activities. It refers to "the use *or* express *or* implied threat of the use of force, violence, intimidation, or duress, or implied threat of the use of other means, to coerce, compel *or* constrain" an employer to hire unneeded employees. However, the Supreme Court points out that the "gist of the offense here charged in the statute

and in the information" is that respondent "willfully, by the use of force, intimidation, duress *and* by the use of other means, did attempt to coerce, compel and constrain" the licensee to hire unneeded employees. (Italics are the Court's.) All that the Court holds is that if the allegations that the prohibited result was attempted to be accomplished by picketing are so broad as to include peaceful constitutionally protected picketing, the trial court would be free to strike them, or the Government might amend the information, so that "this case had not reached a stage where the decision of a precise constitutional issue was a necessity." [68]

* * * * * * * *

With respect to the question as to whether these proceedings should be heard by a three judge court pursuant to the provisions of Title 28, U. S. C. A. Section 380a, Counsel for the Respondents are in accord with the view expressed by Counsel for the Petitioner. The various statutes providing for a determination by three judges and direct appeal to the Supreme Court do not apply where an Act of Congress is merely "drawn in question" and may be invoked only where there is an application to restrain enforcement of an Act of Congress. See International Ladies' Garment Workers Union v. Donnelly Garment Company, 304 U. S. 243.

Respectfully submitted,

ROBERT W. GILBERT
CLARENCE E. TODD
ALLAN L. SAPIRO
Attorneys for Respondent Local 388
By Robert W. Gilbert

Dated: January 10, 1948. [69]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 10, 1948. Edmund L. Smith, Clerk. [70]

[Title of District Court and Cause]

MOTION FOR LEAVE TO FILE SUPPLEMENT TO PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES [71]

To the Honorable Paul J. McCormick, United States District Judge:

Comes now Howard F. LeBaron, Petitioner, by his Attorneys and asks leave to file a supplement to his Memorandum of Points and Authorities, this supplement being the opinion handed down December 31, 1947, by the Honorable S. W. Brennan, United States District Judge for the Northern District of New York, in Civil Action No. 3084 entitled: Charles T. Douds, Regional Director of the Second Region of the National Labor Relations Board, on behalf of the National Labor Relations Board, Petitioner vs. Local No. 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., Respondent, including the Court's letter of transmittal dated January 2, 1948.

ROBERT N. DENHAM
DAVID P. FINDLING
WINTHROP A. JOHNS
DOMINICK MANOLI
GEORGE H. O'BRIEN
Attorney Twenty-First Region, N. L. R. B.

The undersigned counsel for Respondents herein have received copies of the decision hereinbefore referred to and consent to the filing of said decision and letter of transmittal as a supplement to Petitioner's Memorandum

of Points and Authorities, reserving the right to make such written comment thereon as this Honorable Court may allow.

ROBERT W. GILBERT
CLARENCE E. TODD
ALLAN L. SAPIRO
By Robert W. Gilbert

Dated at Los Angeles, California, this 15th day of January, 1948.

[Endorsed]: Filed Jan. 19, 1948. Edmund L. Smith, Clerk. [72]

[Title of District Court and Cause]

ORDER [73]

On motion of Howard F. LeBaron, Petitioner herein, and with the consent of counsel for Respondents, it is hereby:

Ordered

1. Leave is hereby granted to Petitioner to file instanter as a supplement to his Memorandum of Points and Authorities a certain opinion handed down December 31, 1947 by the Honorable S. W. Brennan, United States District Judge for the Northern District of New York, in Civil Action No. 3084 entitled: Charles T. Douds, Regional Director of the Second Region of the National Labor Relations Board, on behalf of the National Labor Relations Board, Petitioner v. Local No. 294, National Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., Respondent, and the Court's letter of transmittal dated January 2, 1948.

2. Leave is hereby granted Respondents to file their comments on said opinion on or before the 19th day of January 1948.

Enter:

PAUL J. McCORMICK
United States District Judge

Dated at Los Angeles this 19th day of January, 1948.

[Endorsed]: Filed Jan. 19, 1948. Edmund L. Smith, Clerk. [74]

[Title of District Court and Cause]

SUPPLEMENT TO PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES [75]

United States District Court
Northern District of New York
Chambers of Judge Stephen W. Brennan
Utica 1, New York

January 2, 1948

Mr. David P. Findling and Mr. Samuel Ross
815 Connecticut Avenue
Washington, D. C.

Mr. John J. Cuneo
120 Wall Street
New York, N. Y.

Mr. Harry Pozefsky
Gloversville, New York

Re: Douds, Regional Director, etc. v. Local 294, etc.
Civil 3084

Douds, Regional Director, etc. v. Local 294, etc.
Civil 3083

Gentlemen:

I am enclosing copy of decision in the Conway case, (No. 3084), and copy of memorandum in the Montgomery Ward case, (No. 3083), the originals of which were filed with the Clerk today. Although I am not sending copies to all attorneys who appeared, I am trying to make certain that both the Washington and New York office of the Board receive a copy, and I am also sending a copy to Judge Walsh.

I am assuming that an appeal will be taken, at least from the order in the Conway case, and it, therefore, becomes important that proper findings and conclusions are made so that the rights of both parties are protected. I suggest that you try to agree upon the findings, conclusions and order, or that each side prepare same, and they can be settled before me.

I think it is evident that I intended that the restraining order in the Conway case, at least insofar as the boycott provision is concerned, would be broad enough to cover all employees, and, therefore, make it unnecessary to issue a second injunction order. If you disagree, I shall be glad to have you make such fact known.

I expect to be holding court in Buffalo during January, but expect to be at my Utica chambers on Saturday of each week.

Allow me to express my appreciation for the manner in which the proceedings were tried, and I assure you that decision would have been given earlier were it not for the press of pending matters.

Very truly yours,

/s/ S. W. Brennan

SWB:C U. S. D. J.

Enclosure [76]

J-1093a INJ.

United States District Court
Northern District of New York

Civil 3084

— X

Charles T. Douds, Regional Director of the Second Region of the National Labor Relations Board, on behalf of the National Labor Relations Board,

Petitioner,

-vs-

Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L.,

Respondent.

— X

Appearances:
Mr. Robert N. Denham
Mr. David P. Findling
Mr. Winthrop A. Johens (sic)
Mr. Samuel Ross
Mr. William W. Kapell
Mr. John J. Cuneo,

Attorneys for Petitioner,
815 Connecticut Avenue
Washington, D. C.

Mr. Harry Pozefsky
Attorney for Respondent
30 South Main Street
Gloversville, New York

Hon. John J. Walsh
Of Counsel,
Utica, New York

Proceeding tried at Utica, New York, December 9-12, 1947; decided December 31, 1947

Brennan, U. S. D. J.

DECISION

This proceeding requires the consideration of the National Labor Relations Act, (hereinafter referred to as the "Act"), as amended by Congress June 23, 1947, by the Labor Management Relations Act, 1947, and popularly known as the Taft-Hartley Labor Act.

A petition has been filed in this Court under the provisions of Section 10(j), and 10(1) of the Act, in which the petitioner prays [77] that an injunction issue restraining the respondent and its agents from engaging in activities which petitioner avers constitute unfair labor practices within the meaning of Section 8 of the Act. The respondent has filed its answer, in substance denying the commission of any activities which might be determined to be unfair labor practices, and further alleges matters in avoidance of petitioner's averments. The proceeding came before the Court through the procedural means of an order to show cause.

A considerable amount of oral evidence was offered by the plaintiff for the purpose of showing the activities of the respondent which are alleged to constitute unfair labor practices. The respondent offered no evidence in contradiction to the evidence of plaintiff's witnesses, and for all practical purposes the decision must be based upon the evidence of the petitioner, and upon the applicable law. Decision of motions made by the respondent was reserved.

The proceeding arises out of a factual situation which may be concisely described as follows. For some years Harry Rabouin has conducted an express or transportation business under the name and style of Conway's Express. The principal place of business is located at

Pittsfield, Mass. with branch terminals at Rensselaer, New York, and Springfield, Mass. The business conducted consists of the transportation of freight by motor truck and trailer over public highways to various destinations in about seven different states.

Prior to September, 1947, Rabouin had leased part of its equipment to the Middle Atlantic Transportation Company located at New Britain, Conn. The leasing arrangement is complicated, but it is sufficient to say that Rabouin was paid upon a mileage and freight weight basis for the equipment so leased. The operators of such equipment were employees of Mid-Atlantic, were under its complete [78] control and their wages were paid by that company. Rabouin's employees, that is, the operators of the Rabouin equipment, used in his own business, were members of the Respondent Union, and Rabouin carried out the terms of a written instrument which is referred to as a contract, which instrument attempted to define the rights of Respondent Union members who were employees of Rabouin. The instrument was not in fact signed by Rabouin, although it appears, as above indicated, that he complied with the obligations thereof. Prior to September 10, 1947, respondent had negotiated with Rabouin to the end that equipment leased by Rabouin should only be operated by union members. Rabouin agreed either to sell the equipment or to arrange for union operators. The arrangement was not carried out. About September 10, 1947, respondent, through its business agent, learned that Rabouin equipment leased to Mid Atlantic had transported or was engaged in transporting freight from New Britain, Conn. to Cleveland, Ohio; the operator of the truck on that occasion not being a member of the union, and, of course, not being an employee

of Rabouin. On September 10, 1947, a strike which still continues was called by respondent against Rabouin. The above statement, together with evidence of acts or occurrences performed or happening during the progress of the strike form the factual background of this proceeding.

Rabouin later filed charges with the Regional Director of the National Labor Relations Board, (hereafter referred to as the "Board"), pursuant to Section 10(b) of the Act, which charges the respondent with having engaged in unfair labor practices as defined in Section 8(b) of the Act. A complaint was thereafter served by the Regional Director upon the respondent, and this proceeding followed.

The specific charges which the petitioner claims constitute [79] unfair labor practices may be concisely stated as follows.

1. The calling of a strike which had for its purpose to force or require Rabouin to cease doing business with the Mid Atlantic Company. (Sec. 8(b) (4)(A).)

2. The refusal to bargain collectively with Rabouin. (Sec. 8(b) (1)(B).)

3. The demand for a closed shop agreement between Rabouin and respondent. (Sec. 8(b) (1)(A).)

4. The demand for the payment by Rabouin to the respondent of money for services not performed or to be performed; to-wit, an amount equal to the wages of a member of Respondent Union for the trip from New Britain, Conn. to Cleveland, Ohio, about September 10, 1947. (Sec. 8(b) (6).)

5. The threatening or coercion of Rabouin's employees. (Sec. 8(b) (1)(A).)

6. The inducing and encouraging by the respondent (sic) of employees of other employers to refuse to receive or deliver articles and materials which had been handled and transported or were to be handled and transported by Rabouin's employees and equipment. (Sec. 8(b) (4)(A).)

The facts as shown by the evidence require little discussion, but there arose sharp differences of opinion as to the extent of the power of the Court to grant relief herein, and the procedure to be followed in arriving at a determination as to whether or not such power should be exercised.

Since the litigants herein fail to agree as to the meaning of the statute upon which the proceeding is based, on the extent of the Court's jurisdiction, upon the relief which may be granted, and the procedure to be followed in the granting or denial of such relief [80] reference is made to the statute itself and to the principles which must govern the decision of the disputed contentions.

Arguments addressed to the fairness or efficiency of the statute are of no value here. Congress alone has the legislative power. The courts may only construe, apply and enforce the statute in accordance with the language and intent thereof. They are not concerned with whether or not the litigants consider the statute either good or bad.

A reading of the Act under consideration leads to the conclusion that, as far as material here, Congress has defined certain activities of employers and employees as unfair labor practices, and devised a means and procedure whereby such practices may be halted. It has also provided procedure by which activities, which are charged by any aggrieved person to amount to unfair

labor practices, may be prohibited or regulated during the time necessarily consumed in the ultimate determination of the facts constituting such charges. (Sec. 10(j) and (1).) It is with the latter procedure and subsections of the Act with which we are primarily concerned in this proceeding.

It is plain that the remedy proscribed takes the form of injunctive relief, and it is equally clear that the Board has the exclusive power to determine whether unfair labor practices have been committed and to issue the appropriate orders upon such determination. (See Sec. 10(a) (e) and (f).)

The procedural steps have been taken herein, and the Board seeks the order of this Court prohibiting the commission of such acts pending its final action and determination. We are concerned here primarily with the temporary relief which may be afforded under the provisions of Sec. 10(j) and (1) of the Act.

The primary purpose of the Act is to promote and safeguard [81] the free flow of commerce. It is recognized that employers, employees and the public are affected thereby, and the Act must be construed in the light of their interest therein.

In this proceeding the Board has invoked the discretionary power invested by Sec. 10(j), and has complied with the mandate of Sec. 10(1), in the institution of this proceeding; it being evident from the language of the last sub-section that Congress determined that unfair labor practices loosely described as boycotts were especially harmful to the public interest. The measure of the court's jurisdiction is similar in both sub-divisions (j) and (1); to-wit, to grant such injunctive relief or

temporary restraining order as it deems just and proper. No other grant or limitation of power is found.

Respondent contends with earnestness that the provisions of the Norris-LaGuardia Act (29 U. S. C. A. 101-115), which substantially eliminates the granting or use of the injunction in labor disputes must be applied here, or at least the bases of irreparable injury, and lack of an adequate remedy at law must be shown before the petitioner may be granted injunctive relief. Both contentions are rejected. The relief provided is entirely statutory. The common law requirements do not apply. The statutory scheme is complete in itself.

> "As the issuance of an injunction in cases of this nature has statutory sanction, it is of no moment that the plaintiff has failed to show threatened irreparable injury or the like, for it would be enough if the statutory conditions for injunctive relief were made to appear. Securities and Exchange Commission v. Jones (C. C.....), 85 F. (2nd) 140."
>
> Securities and Exchange Commission v. Torr, 87 F. 2nd 446 at 450, and See also
>
> Bowles v. Swift & Co., 56 F. Supp. 679 and cases cited.

To impose the limitations of the Norris-LaGuardia Act upon the [82] Act would be to impute to Congress an intention to grant to the Court a jurisdiction with restrictions thereon which would prevent its exercise. No evidence of Congressional intent is drawn from the language

of Sec. 10(h) which specifically excludes the limitations of the Norris-LaGuardia Act from effecting injunctive relief applied for after the making of an order by the Board. This provision was carried over from the original Act, and has no effect upon sub-divisions (j) and (l) which are new provisions in the amended Act. Neither does the phrase "notwithstanding any other provisions of law" as found in Sec. 10(l) indicate that Congress intended that a different statutory requirement must be applied to the jurisdiction of the Court under 10(j) and 10(l). When the Court is given jurisdiction without limitation, the Act means just that; the phrase may be considered as surplusage. Certainly, it can not be used to imply a limitation upon another sub-section where the phrase is not found.

Since this Court has jurisdiction to render only intermediate relief, it would seem logical that something less than a finding of the ultimate facts is contemplated in the Act. To hold otherwise is to subject both petitioner and respondent to two trials, for the Act plainly contemplates a trial by the Board. This Court does not decide which litigant is ultimately entitled to prevail.

While all of plaintiff's evidence was offered and received herein, it is concluded that such detail was neither contemplated by the Act or necessary in fact. There is nothing in the statute which would prompt the Court to depart from the recognized rule of equity that interlocutory relief may be granted upon a showing of reasonable probability that the moving party is entitled to

final relief. A showing of a prima facie case for equitable relief [83] satisfies the statute.

Bowles v. Montgomery Ward & Company, 143 F. 2nd 38 at 42;

Northwestern Stevedoring Company vs. Marshall, 41 F. 2nd 28;

Sinclair Refining Co. vs. Midland Oil Company, 55 F. 2nd 42.

The requirement is the same under either 10(j) or 10(1). The provision of the latter subsection; viz: "If, after such investigation, the officer or regional attorney to whom the matter may be referred, has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States—," is the measure of the requirements which must exist before such officer is required to petition this Court for the authorized relief. It is not the measure of the proof required before this Court may grant such relief.

The requirements of a prima facie case are met when the factual jurisdictional requirements are shown, and credible evidence is presented which, if uncontradicted, would warrant the granting of the requested relief, having in mind the purpose of the statute and interests involved in its enforcement. Such requirement has been met in this proceeding, and petitioner is entitled to relief.

There remains to be considered the type and extent of relief which is considered "just and proper" under the Act. The Court is aware of the frequent admonition

that injunctive relief is not lightly granted, and that such relief looks to the future rather than the past. The Court also appreciates that such rules are applied with different degress of rigidity in private litigation, and when the public [84] interest is involved. (U. S. v. Morgan, 307 U. S. 163 at 194.) In any event injunctive relief may only enjoin those activities which are condemned in the Act. The evidence here tends to establish acts of the respondent constituting unfair labor practices. Such acts are not isolated, but rather are deliberate, wilful and, if not continuous, at least sporadic. No evidence of respondent's efforts to alter its position in reference to such acts is offered. In addition, the Court may consider a similar proceeding instituted in this Court against the same respondent requesting relief under Section 10(1). The above proceeding, based upon the complaint of Montgomery Ward and Company, was instituted at the same time; the order to show cause was returnable at the same time, and the evidence was taken immediately following the trial of the instant proceeding. The decision therein is filed concurrently herewith. In fact, reference to such proceeding is contained in respondent's answer.

The conclusion is reached that the motions made by respondent should be denied, and that an order should issue restraining the respondent from the commission or continuance of the activities set forth in Paragraph "6" of the petition.

Order may be settled on three days' notice.

Stephen W. Brennan
U. S. D. J. [85]

United States District Court
Northern District of New York

Civil 3083

— X

Charles T. Douds, Regional Director of the Second Region of the National Labor Relations Board, on Behalf of the National Labor Relations Board,

Petitioner

-vs-

Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L.,

Respondent

— X

Appearances:
Mr. Samuel Ross
Mr. William W. Kapell
815 Connecticut Avenue
Washington, D. C.
Mr. Bertram Diamond
120 Wall Street
New York City
Attorneys for the National Labor Relations Board

Mr. George V. Brown
Attorney for Montgomery Ward & Company
75 Varick Street
New York, N. Y.

Mr. Harry Pozefsky
Attorney for Respondent, Local 294
Gloversville, New York

Tried December 15-16, 1947; Decided December 31, 1947
Brennan, U. S. D. J.

MEMORANDUM

This proceeding is similar to and may be considered as a companion proceeding to No. 3084, decision in which is filed concurrently herewith, although Section 10(1) of the Labor Management Relations Act, 1947, alone is involved herein.

This proceeding arises out of the following factual situation. Montgomery Ward & Company maintain a place for the transaction of business near Albany, New York, and is engaged in the sale of merchandise. [86] It hires no truck operators; it has no contractual relationship with, and none of its employees are members of the respondent union.

On or about October 15, 1947, the business representatives of the respondent were advised by a guard employed by Montgomery Ward that they must have a pass in order to remain upon the company's property. Such representatives without making themselves known or without attempting to obtain the necessary passes then required operators of transportation equipment, who were members of respondent union, to leave the premises and to refrain from entering thereon. This action resulted in an inability or refusal to handle incoming or outgoing Montgomery Ward merchandise. The situation existed approximately forty-eight hours. No settlement was made, but thereafter it is apparent that respondent union officials allowed or permitted drivers to resume their regular activities insofar as they affected Montgomery Ward and Company.

There was no strike and no dispute between the Montgomery Ward Company and any of its employees.

A charge was filed by Montgomery Ward & Company against the respondent based upon the above facts, which in substance charged that the acts of the respondent, as described above, constituted an unfair labor practice in violation of Section 8(b) (4)(A) of the Act. The charge was followed by the usual procedure and later this proceeding was instituted.

It will serve no purpose to discuss again the legal issues and conclusions which are set forth in the proceeding No. 3084, above referred to. Neither is it necessary to refer to the evidence offered herein. It is sufficient to state that the evidence indicated a course of conduct on the part of respondent's agents which appears to be without justification either in law or in fact. [87]

The conclusion is readily reached that the petitioner is entitled to the relief requested in the petition, but inasmuch as a restraining order is granted to the petitioner against the same respondent in case No. 3084, above referred to, it would seem unnecessary that an additional injunction should issue, and this proceeding is retained upon the docket of this Court pending the final determination of the issues involved herein by The National Labor Relations Board. Petitioner, however, upon showing the necessity for the issuance of an injunction herein may apply to this Court for such relief upon twenty-four hours' notice.

Stephen W. Brennan
U. S. D. J.

[Endorsed]: Filed Jan. 19, 1948. Edmund L. Smith, Clerk. [88]

[Title of District Court and Cause]

REPLY TO PETITIONER'S SUPPLEMENTARY MEMORANDUM OF POINTS AND AUTHORITIES [89]

With the readily granted consent of the undersigned, counsel for petitioner has cited to your Honor, after submission of the above-entitled matter on December 30, 1947, two recent decisions by the United States District Court for the Northern District of New York, construing Section 10(j), 10(1), and 8(b) (4)(A), (B) and (C) of the National Labor Relations Act, as amended June 23, 1947. (Douds v. Local 294, Int'l. Brotherhood of Teamsters, 13 CCH Labor Cases, Pgh. 64,214 and Pgh. 64,215, 21 LRRM 2150 and 21 LRRM 2154, decided January 2, 1948.)

While in general terms District Judge Brennan discusses the issue of whether traditional equity discretion remains vested in the court under the statutory proceedings called for by Sections 10(j) and 10(1) of the amended Act, this opinion does not bear out petitioner's contention as to the extent of the showing required of the Board's agent herein. (The constitutional questions are not even considered.)

In the "Conway's Express" case (No. 3084), and presumably also in the "Montgomery Ward" case (No. 3083)—

> "a considerable amount of oral evidence was offered by the plaintiff for the purpose of showing the activities of the respondent which were alleged to constitute unfair labor practices. The respondent offered no evidence in contradiction to the evidence

> of plaintiff's witnesses, and for all practical purposes the decision must be based upon the evidence of the petitioner, and upon the applicable law."
>
> (Decision, Case No. 3084, p. 2; 13 CCH Labor Cases page 74,424; 21 LRRM at 2151.)

The theory advanced by counsel for petitioner in the present case is that the verified petition of the Board's agent, Regional Director LeBaron, reciting that he "has reason to believe and believes that respondents have engaged in and are engaging in conduct in violation of Section 8(b) subsection (4)(A) of the Act" (Petition p. 3) is per se an adequate showing for injunctive relief upon an order to show cause pursuant to Section 10(1) of the amended Act. This contention stands or falls on the accuracy of Petitioner's claim that under Section 10(1) "injunctive relief should be granted if the Court finds that the officer or regional attorney had reasonable cause to believe that a violation has occurred." (Petitioner's Memorandum, p. 11, lines 8-10) [90]

The "Conway's Express" case (No. 3084) cited by petitioner to support this theory, actually holds to the contrary, as is demonstrated by this language from the decision:

> "The requirement is the same under either 10(j) or 10(1). The provision of the latter subjection, viz 'If after such investigation, the officer or regional attorney to whom the matter may be referred, has reasonable cause to believe such charge is true and

that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States—' is the measure of the requirements which must exist before such officer is required to petition this Court for the authorized relief. It is not the measure of the proof required before this Court may grant such relief."

(Decision, Case No. 3084, p. 8; 13 CHH Labor Cases, page 72,426; 21 LRRM at 2154, Emphasis supplied.)

According to District Judge Brennan, "the requirements of a prima facie case are met when the factual jurisdictional requirements are shown and credible evidence is presented which, if uncontradicted, would warrant the granting of the requested relief." (Ibid.)

In any event, we believe that these nisi prius decisions are only entitled to slight persuasive authority, if any, in passing upon the statute here under attack. (See Respondents' Supplementary Memorandum, p. 8-9, discussing Douds v. Wine Workers' Union (D. Ct., S. D. N. Y., decided December 11, 1947) 13 CCH Labor Cases, Pgh. 64,186; 21 LRRM 2120, and Styles v. Local 74, Carpenters & Joiners (D. Ct., E. D. Tenn., decided October 28, 1947), 13 CCH Labor Cases, Pgh. 64,093; 21 LRRM 2010). They do not relate to the constitutional issues at all.

The difficulty of giving weight to such lower court decisions construing the amended National Labor Relations Act is emphasized by the statutory scheme as out-

lined by counsel for petitioner, which permits the United States District Courts, the Board's Trial Examiner, the National Labor Relations Board itself, and the United States Circuit Court of Appeals to apply the law to the same facts, at various stages of the "unfair labor practice" proceedings under Section 10.

Thus, following the decision in Styles v. Local 74, Carpenters & Joiners, supra, denying injunctive relief under Section 8(b) (4)(A) as incorporated in [91] Section (101), Trial Examiner J. J. Fitzpatrick recommended that a cease and desist order be issued against Local 74 for violation of that identical portion of the Act, in Matter of Watson's Specialty Store and Local 74, Carpenters & Joiners. The trial examiner's recommendation (which under Section 10(c) automatically becomes the order of the Board if no appeal is taken therefrom within 20 days) states in part:

> "With all due deference to the findings of Judge Darr, it is clear that the facts as presented to him in the injunctive hearing are not identical with the evidence as testified to by witnesses in the present proceeding. . . . In this type of case the tribunal exclusively authorized to try the case on the merits is the National Labor Relations Board."
>
> (21 L. R. R. 99 at 100; Report No. 380, CCH Labor Law Reports p. 6.)

We submit that the appellate courts will have to pass upon the constitutionality of the Act before any conclusive authority will exist regarding the same, and that the Wine Workers' Carpenters & Joiners', and Teamsters' cases are barely persuasive at most. They are really no more helpful to the disposition of the instant

case than the finding of Trial Examiner Fitzpatrick in Watson's case that peaceful picketing is privileged under Section 8(c) of the Act, and therefore may not constitute or serve as evidence of an unfair labor practice under Section 8(b) (1)(A).

Respectfully submitted,

ROBERT W. GILBERT
CLARENCE E. TODD
ALLAN L. SAPIRO
Attorneys for Respondent Local 388
By Robert W. Gilbert

Dated: January 19, 1948. [92]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 19, 1948. Edmund L. Smith, Clerk. [93]

[Title of District Court and Cause]

MEMORANDUM OF RULING AND ORDER GRANTING INJUNCTION UNDER SECTION 10(1) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

Sealright Pacific Ltd., manufacturers of paper milk bottle caps and closures and sanitary food containers (hereinafter called Sealright), under the authority of Section 10(b) of the Labor-Management Relations Act, 1947 (hereinafter referred to as the Act), filed with the National Labor Relations Board (hereinafter called the Board), a charge that Printing Specialties and Paper Converters Union, Local 388, A. F. L. (hereinafter called

the Union), has engaged in "unfair labor practices" within the meaning of Section 8(b), subsection 4(A) of the Act, affecting commerce within the terms of Section 2(6) and (7) of the Act.

The charge was duly referred to the Regional Director of the Board for investigation.

Howard F. LeBaron, the accredited and designated [94] officer of the Board, has officially investigated such charge and as the result of his preliminary investigation he avers in a petition pending before the court his belief in the verity of the charge preferred by Sealright and he asseverates that a complaint based upon such charge should issue against the Union and its secretary-treasurer.

In line with the expressed Congressional purpose and policy of the amendment to the National Labor Relations Act as legislatively declared in Section 1(b) of the Act and conformable to the rewritten Findings stated in the Act (Title 29, Section 151, U. S. C. A.), and as required by the terms of Section 10(1) thereof, the accredited Regional Director, upon his supplementary factual ascertainment on behalf of the Board, petitions this court for appropriate injunctive relief against the Union and its above named officer pending final adjudication of the charge of Sealright against the Union.

In his verified petition the investigating Regional Director specifies as the basis and reason for his belief that injunctive process of this court is necessary as an aid and cooperative instrumentality to the Board during its consideration, and until its decision in the matter of Sealright's charge of unfair labor practices by the Union,

the following factual situation concomitant to the dispute between Sealright and the Union:

"(a) Sealright Pacific Ltd. is a corporation organized under and existing by virtue of the laws of the State of California. Its principal office and place of business is located at 1577 Rio Vista Avenue, Los Angeles, California, where it is engaged in the manufacture, sale and distribution of paper food containers and milk bottle caps. In the course and conduct of its business, it purchases and causes to be transported to its Los Angeles plant from points outside the [95] State of California, paper, steel, shipping cases, etc., all valued at an excess of $1,000,000.00 annually. Its finished products comprising milk bottle caps, milk bottle closures and food containers, are valued at an excess of $1,000,000.00 annually and more than 50 per cent of such products are shipped outside the State of California.

(b) Los Angeles Seattle Motor Express, Inc. (hereinafter called L. A. Seattle), 1147 Staunton Avenue, Los Angeles, is a common carrier operating motor trucks between Los Angeles and points in the Pacific Northwest. It has carried Sealright's products for a number of years.

(c) On November 13, 1947, respondent Walter J. Turner (vice-president) of Local 388, advised L. A. Seattle that if it continued to handle Sealright's products, L. A. Seattle would be picketed by Local 388.

(d) On about November 14, 1947, representatives of Local 388 followed two trucks loaded with Seal-

right's products to the L. A. Seattle terminal where by forming a picket line around the two trucks containing the products of Sealright and telling the employees that the trucks contained "hot cargo" and not to "handle it," induced and encouraged the employees of L. A. Seattle, by orders, force, threats, or promises of benefits, not to transport or handle the goods of Sealright. After November 14, 1947, as a result of the above conduct of Local 388 the employees of L. A. Seattle refused to transport or handle the goods of Sealright. Local 388 engaged in the foregoing conduct to force or require L. A. Seattle to cease handling or transporting the products of Sealright.

(e) West Coast Terminals Co. (hereinafter called West Coast), is a public wharfinger with its docks and wharves located on Pier A, Berths 2 and 3, Terminal Island, Long Beach (2), California. On or prior to November 17, 1947, West Coast received from Panama Pacific Lines Vessel S. S. Green Bay Victory, a consignment of rolls of paper destined for Sealright's Los Angeles plant.

(f) On November 17, 1947, while employees of West Coast were engaged in loading the rolls of paper onto freight cars consigned to Sealright in Los Angeles, a group of pickets representing Local 388 [96] appeared at the docks of West Coast and, by forming a picket line around the freight cars being loaded with the rolls of paper for Sealright, induced and encouraged the employees of West Coast, by

orders, force, threats, or promises of benefits, not to handle or work on the paper consigned to Sealright. Since November 17, 1947, as a result of the above conduct of Local 388 and the continued picketing by Local 388 of the docks of West Coast, the employees of West Coast have refused to handle or work on the goods consigned to Sealright. Local 388 engaged in the foregoing conduct in order to force or require West Coast to cease handling or transporting the products of Sealright."

Upon motion of George H. O'Brien, Esq., one of the accredited attorneys of the Board, an order to show cause has been issued directed to the Union and to Mr. Walter J. Turner, an officer thereof, requiring the showing of cause herein by them why pending final adjudication by the Board with respect to the matter of the accused unfair labor practices they should not be enjoined and restrained from continuing such activities.

Both respondents duly appeared on the return day of the order to show cause and through their attorneys, Messrs. Gilbert, Todd and Sapiro, they interposed a motion to dismiss the Board's petition for injunction upon jurisdictional grounds that the invoked sections 8(b), (4), (A) and 10(1) are violative of Amendments I, V and XIII of the Constitution of the United States.

In support of the motion the respondents filed simultaneously therewith an affidavit of Mr. Turner, recounting various steps that have occurred in a labor dispute relating to wage rates and holiday pay between the Union as the collective bargaining agency of the production employees of the Los Angeles plant of Sealright and

such corporation which he avers culminated in a strike of [97] 67 of the approximately 70 production workers in such local plant of Sealright on November 3, 1947.

The only variance between the factual situation ascertained by the Regional Director of the Board and specified in his verified petition and that attested in the affidavit of Mr. Turner in his statement that the picketing at each of the described locales was "peaceful."

While, in conformity to the rule enunciated by the Supreme Court in Hecht Co. v. Bowles, Admr., 321 U. S. 327, 329, we have given appropriate consideration to all of the evidential material before the court, we have concluded that under the unequivocal procedural mandates incorporated in the Act, a finding should be made, and is accordingly made, in this proceeding of the existence of "reasonable cause" for the Regional Director's belief that an "unfair labor practice" as defined in Section 8(b), (4), (A), has occurred.

Therefore it seems clear that the specific injunctive processes expressly conferred upon this court by Section 10(1) of the Act become operable upon the credible petition of the administrative agency as provided in the Act, unless some constitutional limitation supervenes to forestall the restrictive restraint which the Act provides for the situation before us in this matter. Switchmen's Union v. National Mediation Board, 320 U. S. 297. Endicott Johnson Corp. v. Perkins, 317 U. S. 501, 510; United States v. San Francisco, 310 U. S. 16, at pages 30, 31; Securities & Exchange Comm. v. Torr et al. (C. C. A. 2), 87 F. 2d. 446; Otis & Co. v. Securities & Exchange Comm. (C. C. A. 6), 106 F. 2d, 579, at page 583; Walling, Admr. v. T. Buettner & Co. (C. C. A. 7), 133 F.

2d. 306; Henderson, Admr., etc. v. Burd et al., 133 F. 2d. 515, 517; Bowles v. Swift & Co., [98] 56 F. Supp. 679; Porter, Admr. v. Elliott, 5 F. R. D. 223, at page 225; Douds, Regional Director, N. L. R. B. v. Local 294 International Brotherhood of Teamsters, etc., A. F. L. (D. C., N. D. N. Y.), decided December 31, 1947.

Before turning to the very delicate constitutional issue that is involved under the established concrete factual situation before the court, attention should be given to the significant and broad change in legislative policy that is definitely declared and clearly expressed by Congress relative to the use of injunctive processes available in the District Court to ameliorate the public interests in the federal area of labor disputes. Not only is it stated in Subsection (h) of Section 10 of the Act that the equitable jurisdiction of federal courts is no longer to be circumscribed by limitations specified in the Act approved March 23, 1932, 29 U. S. C. A., Section 101, et seq. (Norris-LaGuardia Act), but Subsection (1) of Section 10 further amplifies the National policy of utilizing appropriate judicial injunctive methods in the specific activities that are made unlawful in Section 8(b), (4), (A), of the Act "notwithstanding any other provision of law."

It is evident that unless the decisions of the United States Supreme Court indisputably show the unconstitutionality of Section 8(b), (4), (A) of the Act as incorporated in the new restraint processes now applicable in labor disputes pursuant to the limitations in Section 10(1) of Labor management Relations Act, 1947, this court should grant an appropriate injunction auxiliary to the proceedings in the Board and until the labor dispute

pending before the Board is finally adjudicated by the Board.

The substantive provisions of the Act that are here challenged as constitutionally assailable read thus: [99]

> "It shall be unfair labor practice for a labor organization or its agents—
>
> to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person."

We find no support whatever, under the record before us or within the provisions of the Act that are involved in this matter, for a finding or conclusion that the Thirteenth Amendment has been transgressed.

We are not here considering a criminal statute or parts of an act which relate to outlawed activities characterized as crimes.

The measure involved pertains solely to activities classified in the law as torts, or in other words, wrongs of a civil nature, and the inherent and statutory rights of

employees, as such are preserved by saving provisions in the Act, which read thus:

> "Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act."

The provisions of the Act under scrutiny are products of legislation that clearly under the Constitution is within the power of Congress to enact. Labor Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 46. They are regulatory [100] statutes directed at the control of acts and practices of labor organizations and their agents in the field of interstate commerce that to Congress seemed contrary to the public interest and inimical to general welfare.

The words employed by the legislative body to reach the evil contemplated are clear and precise. It is only coercive and compulsive conduct that is proscribed, and even measured by the stricter rule which applies to criminal statutes Section 8(b), (4), (A), is not unconstitutionally vague or indefinite. See United States v. Petrillo, 332 U. S. 1.

But it is contended that the provisions of the Act upon which the Regional Director, on behalf of the Board, seeks injunctive relief from this court infringe the freedom of speech and assembly guaranteed to all by the due process clause of the Fifth Amendment and by the First Amendment to the Constitution. We think such contention untenable in the situation before us.

It will of course be admitted that the statute, doubtless designated by Congress to effect a practical and beneficial purpose in the federal regulation of industrial controversies, should be upheld if it can be construed in harmony with the fundamental law, and as stated by the Supreme Court in Brown v. Walker, 161 U. S. 591 at page 596:

> "Instead of seeking for excuses for holding acts of the legislative power to be void by reason of their conflict with the Constitution, or with certain supposed fundamental principles of civil liberty, the effort should be to reconcile them if possible, and not to hold the law invalid unless, as was observed by Mr. Chief Justice Marshall, in Fletcher v. Peck, 6 Cranch 87, 128, 'the opposition between the Constitution and the law be such that the judge feels a clear and strong conviction of their incompatibility with each other.'"

We think it indisputable that if the factual [101] situation disclosed by the Regional Director is considered realistically it will be manifest that an object of the picket line at "L. A. Seattle Terminal" and at the harbor in Long Beach, California, was coercion, and the type of coercion that is attended with serious repercussions and dire consequences upon the interests of the

two strangers to the labor dispute between Sealright and the Union. Cf. Bakery Drivers Local v. Wohl, 315 U. S. 769.

The picketing activities, which prompted the representatives of the Board to petition the court for injunctive relief, can in truth hardly be said to have been motivated by "dissemination of information concerning the facts of a labor dispute." A candid and forthright appraisal of the picketing activities in question classifies them as a form of forcible technique that has been held to be subject to restrictive regulation by the State in the public interest on any reasonable basis. Carpenters Union v. Ritter's Cafe, 315 U. S. 722. And in the exclusive federal field of protecting the interests of the public in interstate commerce against forcible obstruction to the free flow of such commerce, Congress has, we think, in Section 8(b), (4), (A), kept within the permissive restrictions on free speech and assembly that have been approved by the Supreme Court in comparable legislation. See Thornhill v. Alabama, 310 U. S. 88 at 105.

The observation of Mr. Justice Douglas in the concurring opinion in Bakery Drivers Local v. Wohl, supra, delineates the evils of "the secondary boycott" which has met disapproval by the Supreme Court in Duplex Printing Press Co. v. Deering, 254 U. S. 443. The learned Justice in the cited recent labor case aptly stated: [102]

> "Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence those aspects of picketing make it the subject of restrictive regulation."

We find that the provisions of the Labor Management Relations Act, 1947, here under attack are valid Congressional legislation and are not unconstitutional.

The respondents' motion to dismiss the petition for temporary injunction is denied in toto.

Accordingly, the attorneys for the Board will within two days from notice hereof serve and present a proposed temporary injunction against respondents in the terms of Section 8(b), (4), (A) of the Act and pursuant to Section 10(1) of the Act, without costs.

Dated February 3, 1948.

PAUL J. McCORMICK
United States District Judge

[Endorsed]: Filed Feb. 3, 1948. Edmund L. Smith, Clerk. [103]

[Minutes: Friday, February 6, 1948]

Present: The Honorable Paul J. McCormick, District Judge.

George H. O'Brien, Esq., one of the attorneys for the petitioner herein, having this day, pursuant to Rule 50 F. R. C. P., and in accordance with the directions of the court in its memorandum of ruling, etc., filed herein February 3, 1948, presented proposed findings of fact, conclusions of law and order, and inspection of such instrument indicates service of same upon Robert W. Gilbert, Esq., Allen L. Sapiro, Esq., and Clarence E. Todd, Esq., as of date February 5, 1948.

Now, Therefore, said proposed findings of fact, conclusions of law and order being this day lodged with the

clerk, pursuant to local rule 7(a) of this court, the judge withholds and postpones consideration and determination of appropriate findings of fact, conclusions of law and injunctive order herein, as specified in said local rule 7(a) and attorneys for the respective parties hereto will govern themselves accordingly. [104]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

This cause came on to be heard upon the verified petition of Howard F. LeBaron, Regional Director of the 21st Region of the National Labor Relations Board, on behalf of said Board, for a temporary injunction, pending final adjudication by the Board of the matters involved, and upon issuance of an order to show cause. The Court has fully considered the verified petition and the motion to dismiss the petition and affidavit of respondent Walter J. Turner, attached thereto. Upon the entire records, briefs, and arguments of counsel, the Court lists the following: [105]

FINDINGS OF FACT

First: Petitioner is Regional Director of the 21st Region of the National Labor Relations Board (herein called the Board).

Second: Respondent Printing Specialties and Paper Converters Union, Local 388, AFL (hereinafter called Local 388) is a labor organization having its principal office within this judicial court, and engaged in promoting and protecting the interests of its employee members within this judicial district.

Third: Respondent Walter J. Turner is and has been at all times herein material, an agent of Local 388 and is engaged in this judicial district in promoting or protecting the interests of employee members of respondent Local 388.

Fourth: On or about November 18, 1947, Sealright Pacific, Ltd. (hereinafter called Sealright), pursuant to the provsions of Section 10(b) of the National Labor Relations Act, as amended (June 23, 1947, Public Law 101, 80th Cong., 1st Sess., Chap. 120, herein called the Act), filed the Charge alleging that respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b), subsection (4)(A) of the Act and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Fifth: Said Charge was thereafter duly referred to petitioner for investigation. Petitioner has investigated said Charge.

Sixth: There is reasonable cause to believe that:

(a) Sealright Pacific Ltd. is a corporation organized under and existing by virtue of the laws of the State of California. Its principal office and place of business is located at 1577 Rio Vista Avenue, Los Angeles, California, where it is engaged in the manufacture, sale and distribution of paper food containers and milk bottle caps. In the course and conduct of its business, it purchases and causes to be transported to its Los Angeles plant from points outside the State of California, paper, steel, shipping cases, etc., all valued at an excess of $1,000,000.00 annually. Its finished products comprising milk bottle caps, milk bottle

closures and food containers, are valued at an excess of $1,000,000.00 annually and more than 50 per cent of such products are shipped outside the State of [106] California.

(b) Los Angeles Seattle Motor Express, Inc. (hereinafter called L. A. Seattle), 1147 Staunton Avenue, Los Angeles, is a common carrier operating motor trucks between Los Angeles and points in the Pacific Northwest. It has carried Sealright's products for a number of years.

(c) On November 13, 1947, respondent Walter J. Turner (vice-president) of Local 388, advised L. A. Seattle that if it continued to handle Sealright's products, L. A. Seattle would be picketed by Local 388.

(d) On about November 14, 1947, representatives of Local 388 followed two trucks loaded with Sealright's products to the L. A. Seattle terminal where by forming a picket line around the two trucks containing the products of Sealright and telling the employees that the trucks contained "hot cargo" and not to "handle it," induced and encouraged the employees of L. A. Seattle, by orders, force, threats, or promises of benefits, not to transport or handle the goods of Sealright. After November 14, 1947, as a result of the above conduct of Local 388 the employees of L. A. Seattle refused to transport or handle the goods of Sealright. Local 388 engaged in the foregoing conduct to force or require L. A. Seattle to cease handling or transporting the products of Sealright.

(e) West Coast Terminals Co. (hereinafter called West Coast), is a public wharfinger with its docks and wharves located on Pier A, Berths 2 and 3, Terminal Island, Long Beach (2), California. On or prior to November 17, 1947, West Coast received from Panama Pacific Lines Vessel S. S. Green Bay Victory, a consignment of rolls of paper destined for Sealright's Los Angeles plant.

(f) On November 17, 1947, while employees of West Coast were engaged in loading the rolls of paper onto freight cars consigned to Sealright in Los Angeles, a group of pickets representing Local 388 appeared at the docks of West Coast and, by forming a picket line around the freight cars being loaded with the rolls of paper for Sealright, induced and encouraged the employees of West Coast, by orders, force, threats, or promises of benefits, not to handle or work on the paper consigned to Sealright. Since November 17, 1947, as a result of the [107] above conduct of Local 388 and the continued picketing by Local 388 of the docks of West Coast, the employees of West Coast have refused to handle or work on the goods consigned to Sealright. Local 388 engaged in the foregoing conduct in order to force or require West Coast to cease handling or transporting the products of Sealright.

Seventh: Unless restrained from engaging in the aforementioned acts and conduct, there is imminent likelihood that respondents will continue to engage in such acts and conduct.

Eighth: The acts and conduct of respondents above set forth, occurring in connection with the operation of Sealright, described above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

First: Sealright is engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

Second: Respondent Printing Specialties and Paper Converters Union, Local 388, AFL, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

Third: Respondent Walter J. Turner is and has been at all times herein, an agent of Local 388 within the meaning of Section 8(b) of the Act.

Fourth: This Court has jurisdiction of the proceedings and of respondents, and can grant injunctive relief under Section 10(1) of the Act.

Fifth: Said jurisdiction of the Court is not limited by the Norris-LaGuardia Act. (U. S. C., Supp. VII, Title 29, Sect. 101-15.)

Sixth: Section 8(b), subsection (4)(A) of the Act is not repugnant to, or in controversion of, the guarantee of freedom of speech, the guarantee of liberty, and the prohibition of involuntary servitude contained in the

First, Fifth, and Thirteenth Amendments, respectively, of the Constitution of the United States.

Seventh: There is reasonable cause to believe that respondents have engaged in unfair labor practices within the meaning of Section 8(b), subsec- [108] tion (4)(A) of the Act, obstructing commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

Eighth: It is appropriate, just, and proper that, pending final adjudication by the Board of said matter, respondents and each of them, their agents, servants, employees, attorneys, and all persons acting in active concert or participation with them, be enjoined and restrained from the commission or continuance of the acts and conduct set forth in the Findings of Fact above, or like or related acts or conduct whose commission in the future is likely or may be fairly anticipated, from respondents' acts and conduct in the past.

It is, therefore, by this Court:

Ordered that Printing Specialties and Paper Converters Union, Local 388, AFL, and Walter J. Turner and each of them and their agents, servants, employees, and attorneys and all persons in active concert or participation with them be and hereby are restrained and enjoined, pending final adjudication by the Board of this matter, from:

> Engaging in, or inducing or encouraging, the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment

to use, manufacture, process, transport, or otherwise handle or work on any goods articles, materials, or commodities, or to perform any services, where an object thereof is forcing or requiring any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, Sealright Pacific, Ltd.

It Is Further Ordered that respondents' Motion to Dismiss the Petition for a Temporary Injunction herein be and hereby is dismissed in toto.

Dated at Los Angeles, California, this 6th day of February, 1948.

.....
United States District Judge

Presented by: George H. O'Brien, Attorney for Petitioner.

Approved as to form this 5th day of February, 1948.
....., Attorneys for Respondents. [109]

[Affidavit of Service by Mail.]

[Endorsed]: Lodged Feb. 6, 1948. Edmund L. Smith, Clerk. [110]

[Title of District Court and Cause]

RESPONDENTS' MEMORANDUM IN OPPOSITION TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND PRELIMINARY INJUNCTION [111]

Come now Printing Specialties and Paper Converters Union, Local 388, AFL, and Walter J. Turner, respondents herein, and aver that petitioner's Proposed Findings of Fact, and Conclusions of Law And Proposed Order do not conform to Rule 65(d) of the Rules of Civil Procedure for the District Courts of the United States, which provides:

> "Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

Respondents hereby object to the following paragraphs in said proposed Order:

I.

Respondents object to petitioner's description of the order as a "temporary injunction" (p. 1, line 26), and hereby request that one of the following be substituted for the same: "interlocutory injunction," "preliminary injunction" or "injunction." It is to be noted that the Rules of Civil Procedure do not refer to "temporary

injunctions," and do discuss "injunctions" (Rule 65), "interlocutory injunctions" (Rule 52) and "preliminary injunctions" (Rule 65). Perhaps petitioner may have confused this order with a Temporary Restraining Order (Rule 65(b-e)), from which no appeal may be had.

II.

OBJECTIONS TO PETITIONER'S PROPOSED FINDINGS OF FACT

It is obvious from the proposed Order that petitioner has adopted almost in haec verba those allegations appearing in the Petition For An Injunction (pp. 2-5) as the "Findings of Fact" in the present Order. The defects in such proposed Findings of Fact, including the omission of any and all uncontroverted facts adduced by respondents become patent upon comparison of said proposed [112] Findings with the facts as conceded in petitioner's Memorandum of Points and Authorities In Support Of Petition For Injunction (pp. 9-10) and the Affidavit of Walter J. Turner In Support Of Motion To Dismiss (pp. 1-6).

The Sixth Finding of Fact encompasses the basic facts in the labor dispute in question. Since the order granting the preliminary injunction is based upon conduct flowing from this dispute, respondents contend that the statement must show accurately all facts relating thereto presented by both parties, and must not contain legal conclusions. This Honorable Court has pointed out the variance between the factual conclusions of the Regional Director of the Board and those uncontroverted facts attested in the affidavit of Mr. Turner (Mem. Op. p. 5, lines 3-7), and thus it can be seen that the facts presented by both sides must be so included.

1. Sub-paragraphs (a) and (b) of the Sixth Finding of Fact are exact copies of the allegations set forth in Section 7 of the Petition For An Injunction (p. 3, parags. (a) and (b).

2. Sub-paragraph (c) of the Sixth Finding is likewise an exact duplication of Section 7(c) of the Petition For An Injunction. This sub-paragraph illustrates the inaccuracies which occur from what might be termed a "short-cut" method of using the statements in the petitioner's initial pleading, rather than trying to present a comprehensive statement of fact which is not based solely on the complaint.

In this subsection, Walter J. Turner is described as the "vice-president" of Local 388, which follows a similar description set forth in the original petition (p. 3, Section 7(c)). In his subsequent affidavit, Mr. Turner alleged that he is and was the secretary-treasurer of the union. That this is the true office held by Mr. Turner is best evidenced by the statement in petitioner's Memorandum of Points and Authorities In Support Of Petition For Injunction, wherein it is correctly alleged that Mr. Turner was the secretary-treasurer of Local 388 (Memo. of Pts. & Auths., p. 9, line 19).

However a more serious error is found in petitioner's erreonous allegation that Turner "advised L. A.-Seattle that if it continued to handle Sealright's products, L. A. Seattle would be picketed by Local 388." [113]

This allegation is specifically refuted by the Affidavit of Walter Turner (p. 4, etc.), wherein it is alleged that "At no time did affiant advise Los Angeles-Seattle Motor Express, Inc. that Local 388 would picket all or any of the firm's operations as such, if it continued to handle Sealright products, nor did affiant in any way indicate

or imply that Local 388 would picket any other products being handled or transported by said firm for companies other than Sealright Pacific, Ltd., under any circumstances whatsoever." In addition, petitioner himself, in his Memorandum of Points and Authorities of January 2, 1948 (at p. 9) refutes his statement of December 17, 1947, made in the Petition for Injunction, for in the January 2, 1948, pleading, it is stated that "On about November 13, 1947, respondent Turner, Secretary-Treasurer of Local 388, advised the Los Angeles Seattle Motor Express, Inc. (hereinafter called L. A. Seattle), a common carrier which has transported Sealright's products, that if L. A. Seattle continued to handle Sealright's products, Local 388 would picket Sealright products handled by L. A. Seattle."

There can be no doubt that this quotation is in sharp conflict with the petitioner's proposed Sixth (c) Finding of Fact.

3. Sub-paragraph (d) of the Sixth Finding of Fact, being a duplicate of Section 7(a) of the Petition, attempts to incorporate conclusions of law into the facts. A more factual description of the identical incident appears on Page 9 of petitioner's Memorandum of Points And Authorities In Support Of Petition For Injunction, wherein it is stated that . . . "On about November 14, 1947, representatives of Local 388 formed as a picket line around two trucks loaded with Sealright's products at the terminal of L. A. Seattle. Said representatives informed the employees of L. A. Seattle that the trucks contained hot cargo and told or requested them not to handle it. After November 14, as a result of said picketing by Local 388, the employees of L. A. Seattle refused to transport or handle the goods of Sealright."

The foregoing statement of the petitioner incorporates far less legal conclusions than does the proposed Sub-paragraph (d), which seeks to use legal phrases rather than factual descriptions.

4. Sub-paragraph (e) of the Sixth Finding is a duplication of Paragraph [114] 7(e) of the Petition, with the words "(hereinafter called West Coast)" added.

5. Sub-paragraph (f) similarly is exactly the same as Paragraph 7(f) of the Petition (Petition, pp. 4-5), and in the same pattern as the aforementioned sub-paragraphs, seeks to incorporate the charges made on December 17, 1947, as the findings of fact. In the Memorandum of Points and Authorities In Support Of The Petition, the petitioner makes a more factual and less-legalistic description of the incident which sub-paragraph (f) attempts to describe. (See Memo. of Pts. and Auths. p. 9, lines 29-32.)

A more important error in this sub-paragraph is the omission from the findings of fact that on or about November 17, 1947, Local 388 peacefully picketed Sealright products being loaded onto three freight cars located at a siding adjacent to the warehouse of the West Coast Terminals Company, which products consisted of rolls of paper consigned from a New York plant of Sealright Pacific Ltd. to the Los Angeles branch plant of the struck concern for use in continued manufacturing operations. (See Respondents' Supplementary Memo. of Pts. and Auths. p. 3, parag. (4); Affidavit of Walter J. Turner, p. 5, lines 20-23.)

6. Respondents request this Honorable Court to strike Paragraphs Seventh and Eighth of the Findings of Fact on the grounds that no evidence or factual matter what-

soever was presented by petitioner in support of either of these paragraphs, and therefore the same are merely petitioner's conclusions. (See Petition for Injunction, p. 5, parag. 8.)

Additional Findings of Fact

As discussed above, the uncontroverted facts presented by both parties which are pertinent to the case herein, should be included in the Findings of Fact. To accomplish this, respondents have prepared the Proposed Findings of Fact which is attached to this Memorandum, marked as "Exhibit A" and incorporated by reference herein.

In summary, respondents make the above objections to the Proposad Findings of Fact because the Petition for Injunction is not in reality a verified petition in that no proof was offered in any manner whatsoever that the facts and incidents alleged by the petitioner did occur. The only verification present is that of [115] the regional director that he had reason to believe that certain acts occurred, but proof of the facts upon which such reason is based has not been offered by petitioner. No witnesses and no affidavits were presented by petitioner, and therefore it is improper to make any finding of fact where such has not been admitted or conceded by respondents.

III.

OBJECTIONS TO PETITIONER'S PROPOSED CONCLUSIONS OF LAW

1. Respondents object to the language of the Fourth Conclusion of Law. This Honorable Court has jurisdiction of the proceedings and of respondents, and pursuant

to the provisions of Section 10(1) of the Act, may grant such injunctive relief as it deems just and proper.

2. Respondents object to the Fifth Conclusion of Law as being surplusage and having no part in the case herein, and therefore request this Honorable Court to strike the same from the Proposed Conclusions of Law.

3. Respondents object to the Seventh Conclusion of Law as misstating the evidence submitted in the case herein. As stated in, and according to, the affidavits and pleadings on file in this case, the petitioner claims reasonable cause to believe that respondents have engaged in unfair labor practices within the meaning of Section 8(b), subsection (4)(A) of the Act.

4. Respondents object to the Eighth Conclusion of Law in that petitioners violate Rule 65(d) of the Rules of Civil Procedure, set forth hereinabove, in that the application of the injunction is not limited to the respondents, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

IV.

OBJECTIONS TO PETITIONER'S PROPOSED INJUNCTION ORDER

Respondents object to petitioner's couching the proposed Order in the language of the Act, which language is so vague and indefinite that it will be impossible for petitioner and respondents to know what conduct is allowed and what conduct is limited by the Order. It is the intention of the respondents to comply with the Order of this Honorable Court pending the taking of an appeal

[116] therefrom. However respondents cannot ascertain from the proposed Order whether they would be restrained from picketing Sealright Pacific, Ltd., Los Angeles-Seattle Motor Express, Inc., or West Coast Terminals Co., or any employer; from causing Sealright Pacific, Ltd., to be placed on the "We Do Not Patronize" list of the Los Angeles Central Labor Council and of said list of the California State Federation of Labor; whether respondents are prohibited thereby from publicizing the facts of the labor dispute in issue by expressing any views, arguments or opinions, or disseminating the same in written, printed, graphic or visual form.

Finally respondents object to said proposed Order on the ground that it fails to comply with the requirement of Rule 65 (d) of the Rules of Civil Procedure, set forth hereinabove, in that it is not specific in terms; does not describe in reasonable detail the act or acts sought to be restrained; and violates Rules 65(d) in that it is not limited to the parties herein, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation who receive actual notice of the order by personal service or otherwise.

Respectfully submitted,

ROBERT W. GILBERT
CLARENCE E. TODD
ALLAN L. SAPIRO

Attorneys for Respondent Printing Specialties and Paper Converters Union, Local #388

By Allan L. Sapiro [117]

EXHIBIT "A"
PROPOSED FINDINGS OF FACT

First, Petitioner is Regional Director of the 21st Region of the National Labor Relations Board (herein referred to as the Board).

Second, Respondent Printing Specialties and Paper Converters Union, Local 388, AFL (hereinafter referred to as Local 388) is a labor organization having its principal offices at 1543 West 11th Street, Los Angeles, California, within this judicial district and is engaged in promoting and protecting the interests of its employee members within this judicial district.

Third, Respondent Walter J. Turner is and has been at all times herein mentioned, an officer of Local 388, to wit, the secretary-treasurer, and is engaged in this judicial district in promoting and protecting the interests of employee members of respondent Local 388.

Fourth, On or about November 18, 1947, Sealright Pacific Ltd. (hereinafter called Sealright) pursuant to the provisions of Section 10(b) of the National Labor Relations Act, as amended June 23, 1947, Public Law 101, 80th Cong., 1st Sess., Chap. 120, herein called the Act), filed the Charge alleging that respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b), subsection (4)(A) of the Act and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Fifth, Said Charge was thereafter duly referred to petitioner for investigation. Petitioner has investigated said Charge.

Sixth, Local 388 is a party to numerous collective bargaining agreements consumated with various employers

engaged in the manufacture, distribution and sale of various boxes and paper products in addition to food containers and milk bottle caps. By the terms of said agreements, contracted during the past twelve months, 1,500 members of the union are assured of a prevailing scale of minimum wages ranging from $1.20 to $1.33½ per hour for the lowest-skilled male job classifications and from $1.10 to $1.22½ per hour for the lowest-skilled female job classifications, with progressively higher rates for skilled job classifications set forth in said contracts. [118]

Seventh, Sealright Pacific Ltd. is a corporation organized under and existing by virtue of the laws of the State of California. Its principal office and place of business is located at 1577 Rio Vista Avenue, Los Angeles, California, where it is engaged in the manufacture, sale and distribution of paper food containers and milk bottle caps. In the course and conduct of its business, it purchases and causes to be transported to its Los Angeles plant from points outside the State of California, paper, steel, shipping cases, etc., all valued at an excess of $1,000,000.00 annually. Its finished products comprising milk bottle caps, milk bottle closures and food containers, are valued at an excess of $1,000,000.00 annually and more than 50 per cent of such products are shipped outside the State of California.

Eighth, Local 388 was recognized as the exclusive bargaining agent of the production employees of the Los Angeles plant of Sealright Pacific, Ltd. in September, 1941, by said corporation. Each year thereafter, from 1941 to 1946, collective bargaining agreements were negotiated and executed between Sealright Pacific, Ltd. and Local 388 through negotiations, and without any strike or interruption of work.

Ninth, On August 16, 1947, Local 388 gave notice to Sealright Pacific, Ltd. pursuant to provisions in the union contract, of proposed modifications in the agreement, which terminated October 16, 1947. On September 15, 1947, in compliance with Section 8(d)(3) of the National Labor Relations Act as amended on June 23, 1947, Local 388 notified the Federal Mediation and Conciliation Service and the California State Department of Industrial Relations that a dispute existed. Thereafter between August 16, 1947, and October 29, 1947, eleven (11) meetings were held between representatives of Local 388 and of Sealright Pacific, Ltd. for the purpose of negotiating a new contract, during the course of which meetings mutual consent was arrived at between the two parties as to all terms of a new collective bargaining agreement, except wage rates and holiday pay. At the final meeting on October 29, 1947, Sealright Pacific, Ltd. offered to raise the hourly rate for the lowest-skilled male job classification from $1.02½ to $1.10, whereas the prevailing industry male base rate ranged from $1.20 to $1.33½ per hour. The company also offered to raise [119] the hourly rates for the lowest-skilled female job classification from $.87½ to $.92½ per hour, although the industry rate ranged from $1.10 to $1.22 per hour.

Tenth, Local 388 was unwilling to accept the wage offers proposed by Sealright Pacific, Ltd. on October 29, 1947, because of standards contained in the various existing contracts between Local 388 and the other employers of the 1,500 members of the local union, and therefore called a strike of its members against Sealright Pacific, Ltd., on November 3, 1947.

Eleventh, At the time said strike was instituted, all of the seventy (70) production employees of the Los

Angeles plant of Sealright Pacific, Ltd. were members in good standing of Local 388, and all but three of said employees joined in said strike against their employer.

Twelfth, Los Angeles-Seattle Motor Express, Inc. (hereinafter referred to as L. A.-Seattle), at 1147 Staunton Avenue, Los Angeles, California, is a common carrier operating motor trucks between Los Angeles and points in the Pacific Northwest. It was carried Sealright's products for a number of years.

Thirteenth, On or about November 13, 1947, respondent Walter J. Turner, Secretary-Treasurer of Local 388, advised the L. A.-Seattle Motor Express Inc. that Local 388 was engaged in a strike due to a wage dispute with Sealright Pacific, Ltd., and that Local 388 intended to picket Sealright's products manufactured under strike conditions and at substandard wages for the purpose of publicizing the dispute and soliciting the assistance of other workers asking that they decline to handle this merchandise.

Fourteenth, On or about November 14, 1947, members of Local 388 on strike at Sealright Pacific, Ltd., formed a peaceful picket line around two trucks loaded with Sealright's products at the terminal of L. A.-Seattle, and informed the trucking concern's employees that the Sealright Pacific, Ltd. products were manufactured under strike conditions and for substandard wages, and requested them not to handle said products. After November 14, 1947, the employees of L. A.-Seattle refused to transport or handle the goods of Sealright Pacific, Ltd.

Fifteenth, West Coast Terminals Co. (hereinafter referred to as West Coast), is a public wharfinger with its docks and wharves located on Pier A, [120] Berths 2

and 3, Terminal Island, Long Beach, California. On or prior to November 17, 1947, West Coast received from the Panama Pacific Lines' vessel, S. S. Green Bay Victory, a consignment of rolls of paper from a New York plant of Sealright Pacific, Ltd., destined for the Los Angeles plant of Sealright.

Sixteenth, On November 17, 1947, and for several days thereafter, members of Local 388 picketed Sealright Pacific, Ltd. products being loaded onto three freight cars by employees of West Coast Terminals Co., which products were rolls of paper consigned from the New York plant to the Los Angeles plant of Sealright Pacific, Ltd., for use in manufacturing operations. The three freight cars in question were located on a siding alongside a West Coast warehouse, and the picket lines established by Local 388 did not pass in front of the doors of the warehouse. Whenever it was necessary for the West Coast to move these three freight cars in order to bring on or remove other freight cars from the siding, the members of Local 388 did not interfere with said moving. Subsequent to November 17, 1947, the employees of West Coast have refused to handle or work on goods consigned to Sealright Pacific, Ltd. [121]

[Affidavit of Service by Mail.]

[Endorsed]: Filed. Feb. 10, 1948. Edmund L. Smith, Clerk. [122]

[Minutes: Wednesday, February 11, 1948]

Present: The Honorable Paul J. McCormick, District Judge.

Petitioner having submitted pursuant to memorandum of ruling, proposed findings of fact, conclusions of law

and order, and respondents having filed memorandum in opposition thereto, the Court fixes and sets for hearing, settlement and entry of findings of fact, conclusions of law and injunctive relief in this action, Friday, February 13th, 1948, at 2:00 P. M. of said day, and the Clerk will notify respective attorneys accordingly. [123]

[Minutes: Friday, February 13, 1948]

Present: The Honorable Paul J. McCormick, District Judge.

For hearing, settlement and entry of Findings of Fact and Conclusions of Law, and Injunctive Relief in this action, pursuant to order entered Feb. 11, 1948; Geo. H. O'Brien, Esq., appearing as counsel for petitioner; Robert W. Gilbert and Allan L. Sapiro, Esqs., appearing as counsel for respondents; and both sides answering ready, it is ordered that counsel proceed.

Attorney Gilbert makes a statement; Attorney O'Brien makes a statement; Attorney Gilbert makes a further statement; the Court makes a statement; and counsel makes further statements re proposed amendments to documents before the Court. The Court orders that proposed Findings of Fact, Conclusions of Law and injunctive relief issue as requested and as amended at this hearing to show (1) incorporation of the Court's ruling by reference in Findings of Fact, and (2) addition to final page of proposed injunction, certain words defining acts prohibited. Attorney for petitioner is directed to prepare, serve, and present to the Court said documents in final form by Feb. 16, 1948, 4 P. M. [124]

In the District Court of the United States for the Southern District of California

Central Division

No. 7859-M.

HOWARD F. LeBARON, Regional Director of the 21st Region of the NATIONAL LABOR RELATIONS BOARD, on Behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

PRINTING SPECIALTIES AND PAPER CONVERTERS UNION, LOCAL 388, AFL, and WALTER J. TURNER,

Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER

This cause came on to be heard upon the verified petition of Howard F. LeBaron, Regional Director of the 21st Region of the National Labor Relations Board, on behalf of said Board, for a temporary injunction, pending final adjudication by the Board of the matters involved, and upon issuance of an order to show cause. The Court has fully considered the verified petition and the motion to dismiss the petition and affidavit of respondent Walter J. Turner, attached thereto. Upon the entire record, briefs, and arguments of counsel, the Court lists the following: [125]

FINDINGS OF FACT

First: Petitioner is Regional Director of the 21st Region of the National Labor Relations Board (herein called the Board).

Second: Respondent Printing Specialties and Paper Converters Union, Local 388, AFL (hereinafter called Local 388) is a labor organization having its principal office within this judicial district and engaged in promoting and protecting the interests of its employee members within this judicial district.

Third: Respondent Walter J. Turner is and has been at all times herein material, an agent of Local 388 and is engaged in this judicial district in promoting or protecting the interests of employee members of respondent Local 388.

Fourth: On or about November 18, 1947, Sealright Pacific, Ltd. (hereinafter called Sealright) pursuant to the provisions of Section 10(b) of the National Labor Relations Act, as amended (June 23, 1947, Public Law 101, 80th Cong., 1st Sess., Chap. 120, herein called the Act), filed the Charge alleging that respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b), subsection (4)(A) of the Act and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Fifth: Said Charge was thereafter duly referred to petitioner for investigation. Petitioner has investigated said Charge.

Sixth: There is reasonable cause to believe that:

(a) Sealright Pacific Ltd. is a corporation organized under and existing by virtue of the laws of the State of California. Its principal office and place of business is located at 1577 Rio Vista Avenue, Los Angeles, California, where it is engaged in the manufacture, sale and distribution of paper food containers and milk bottle caps. In the course

and conduct of its business, it purchases and causes to be transported to its Los Angeles plant from points outside the State of California, paper, steel, shipping cases, etc., all valued at an excess of $1,000,000.00 annually. Its finished products comprising milk bottle caps, milk bottle closures and food containers, are valued at an excess of $1,000,000.00 annually and more than 50 per cent of such products are shipped outside the State of [126] California.

(b) Los Angeles Seattle Motor Express, Inc., (hereinafter called L. A. Seattle), 1147 Staunton Avenue, Los Angeles, is a common carrier operating motor trucks between Los Angeles and points in the Pacific Northwest. It has carried Sealright's products for a number of years.

(c) On November 13, 1947, respondent Walter J. Turner (vice-president) of Local 388, advised L. A. Seattle that if it continued to handle Sealright's products, L. A. Seattle would be picketed by Local 388.

(d) On about November 14, 1947, representatives of Local 388 followed two trucks loaded with Sealright's products to the L. A. Seattle terminal where by forming a picket line around the two trucks containing the products of Sealright and telling the employees that the trucks contained "hot cargo" and not to "handle it," induced and encouraged the employees of L. A. Seattle, by orders, force, threats, or promises of benefits, not to transport or handle the goods of Sealright. After November 14, 1947, as a result of the above conduct of Local 388 the employees of L. A.

Seattle refused to transport or handle the goods of Sealright. Local 388 engaged in the foregoing conduct to force or require L. A. Seattle to cease handling or transporting the products of Sealright.

(e) West Coast Terminals Co., (hereinafter called West Coast) is a public wharfinger with its docks and wharves located on Pier A, Berths 2 and 3, Terminal Island, Long Beach (2), California. On or prior to November 17, 1947, West Coast received from Panama Pacific Lines Vessel S.S. Green Bay Victory, a consignment of rolls of paper destined for Sealright's Los Angeles plant.

(f) On November 17, 1947, while employees of West Coast were engaged in loading the rolls of paper onto freight cars consigned to Sealright in Los Angeles, a group of pickets representing Local 388 appeared at the docks of West Coast and, by forming a picket line around the freight cars being loaded with the rolls of paper for Sealright, induced and encouraged the employees of West Coast, by orders, force, threats, or promises of benefits, not to handle or work on the paper consigned to Sealright. Since November 17, 1947, as a result of the [127] above conduct of Local 388 and the continued picketing by Local 388 of the docks of West Coast, the employees of West Coast have refused to handle or work on the goods consigned to Sealright. Local 388 engaged in the foregoing conduct in order to force or require West Coast to cease handling or transporting the products of Sealright.

Seventh: Unless restrained from engaging in the aforementioned acts and conduct, there is imminent likeli-

hood that respondents will continue to engage in such acts and conduct.

Eighth: The acts and conduct of respondents above set forth, occurring in connection with the operation of Sealright, described above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

Ninth: This Court's February 3, 1948, Memorandum of Ruling and Order Granting Injunction Under Section 10(1) of the National Labor Relations Act as amended is hereby reaffirmed and made a part hereof with the same force and effect as though fully set forth herein.

CONCLUSIONS OF LAW

First: Sealright is engaged in commerce within the meaning of Section 2, subsection (6) and (7) of the Act.

Second: Respondent Printing Specialties and Paper Converters Union, Local 388, AFL, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

Third: Respondent Walter J. Turner is and has been at all times herein, an agent of Local 388 within the meaning of Section 8(b) of the Act.

Fourth: This Court has jurisdiction of the proceedings and of respondents, and can grant injunctive relief under Section 10(1) of the Act.

Fifth: Said jurisdiction of the Court is not limited by the Norris-LaGuardia Act. (U. S. C., Supp. VII, Title 29, Sect. 101-15.)

Sixth: Section 8(b), subsection (4)(A) of the Act is not repugnant to, or in controversion of, the guarantee

of freedom of speech, the guarantee of liberty, and the prohibition of involuntary servitude contained in the First, [128] Fifth, and Thirteenth Amendment, respectively, of the Constitution of the United States.

Seventh: There is reasonable cause to believe that respondents have engaged in unfair labor practices within the meaning of Section 8(b), subsection (4)(A) of the Act, obstructing commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

Eighth: It is appropriate, just, and proper that, pending final adjudication by the Board of said matter, respondents and each of them, their agents, servants, employees, attorneys, and all persons acting in active concert or participation with them, be enjoined and restrained from the commission or continuance of the acts and conduct set forth in the Findings of Fact above, or like or related acts or conduct whose commission in the future is likely or may be fairly anticipated, from respondents' acts and conduct in the past.

It is, therefore, by this Court:

Ordered that Printing Specialties and Paper Converters Union, Local 388, AFL, and Walter J. Turner and each of them and their agents, servants, employees and attorneys and all persons in active concert or participation with them be and hereby are restrained and enjoined, pending final adjudication by the Board of this matter, from:

> Engaging in, or inducing or encouraging, the employees of any employer, by picketing, orders, force, threats, or promises of benefit, ~~or by permitting any such to remain in effect,~~ [PJM, J] or by any other like or related acts or conduct to engage in, a strike

or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is forcing or requiring any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, Sealright Pacific, Ltd.

It Is Further Ordered that respondents' Motion to Dismiss the Petition for a Temporary Injunction herein be and hereby is dismissed in toto. [129]

Dated at Los Angeles, California, this 16th day of February, 1948, at 4:12 p. m.

PAUL J. McCORMICK
United States District Judge

Presented by: George H. O'Brien, Attorney for Petitioner.

Approved as to form this 16th day of February, 1948. ....., Attorneys for Respondents.

Judgment entered Feb. 16, 1948. Docketed Feb. 16, 1948. Book 48, page 551. Edmund L. Smith, Clerk; by E. M. Enstrom, Jr., Deputy. [130]

Received copy of the within Findings of Fact, etc., this 16th day of February, 1948. Marian A. Hauger for Robert W. Gilbert, Allan L. Sapiro.

[Endorsed]: Filed Feb. 16, 1948. Edmund L. Smith, Clerk. [121]

United States District Court
Southern District of California

Central Division

NOTICE BY CLERK OF ENTRY OF JUDGMENT

George H. O'Brien, Esq., et al.
National Labor Relations Board
111 W. 7th St., Rm. 704
Los Angeles 14, Calif.

Robert W. Gilbert, Esq., et al.
117 W. Ninth St.
Los Angeles 15, Calif.

Re: Howard F. LeBaron v. Printing Specialties Union, et al., No. 7859-M-Civ.

Gentlemen:

You are hereby notified that Order for Injunctive Relief has been entered this day in the above-entitled case, in Civil Order Book, No. 48, page 551.

Feb. 16, 1948

EDMUND L. SMITH
Clerk

By E. M. Enstrom
Deputy Clerk [132]

[Title of District Court and Cause]

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS [133]

Notice is hereby given that Printing Specialties and Paper Converters Uuion, Local 388, AFL, and Walter J. Turner, respondents above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the order and temporary injunction enjoining and restraining the respondents Printing Specialties and Paper Converters Union, Local 388, AFL, and Walter J. Turner and each of them and their agents, servants, employees and attorneys and all persons in active concert or participation with them pending final adjudication by the Board of this matter, from:

> Engaging in, or inducing or encouraging, the employees of any employer, by picketing, orders, force, threats, or promises of benefit, or by any other like or related acts or conduct to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is forcing or requiring any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, Sealright Pacific, Ltd.,

entered in this action on February 16, 1948.

Dated: March 1, 1948.

ROBERT W. GILBERT
CLARENCE E. TODD
ALLAN L. SAPIRO
Attorneys for Appellants

By Allan L. Sapiro

[Endorsed]: Filed & mld. copy to Geo. H. O'Brien, Mar. 1, 1948. Edmund L. Smith, Clerk. [134]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 138, inclusive, contain full, true and correct copies of Petition for an Injunction Under Section 10(1) of the National Labor Relations Act, as amended; Motion for Order to Show Cause; Order to Show Cause; Notice of Motion to Dismiss Petition for an Injunction Under Section 10(1) of the National Labor Relations Act, as amended together with Respondents' Memorandum of Points and Authorities and Affidavit of Walter J. Turner in Support of Motion to Dismiss; Exhibit 1 to Petition for Injunction; Memorandum of Points and Authorities in Support of Petition for Injunction Under Section 10(1) of the National Labor Relations Act, as

amended; Respondents' Supplementary Memorandum of Points and Authorities; Motion for Leave to File Supplement to Petitioner's Memorandum of Points and Authorities; Order; Supplement to Petitioner's Memorandum of Points and Authorities; Reply to Petitioner's Supplementary memorandum of Points and Authorities; Memorandum of Ruling and Order Granting Injunction Under Section 10(1) of the National Labor Relations Act as amended; Minute Order Entered February 6, 1948; Findings of Fact and Conclusions of Law and Order (Proposed); Respondents' Memorandum in Opposition to Proposed Findings of Fact and Conclusions of Law and Preliminary Injunction; Minute Orders Entered February 11 and 13, 1948; Findings of Fact and Conclusions of Law and Order; Copy of Notice by Clerk of Entry of Judgment; Notice of Appeal to Circuit Court of Appeals and Designation of Contents of Record on Appeal which, together with copy of Reporter's Transcript of Proceedings on December 18 and 30, 1947 and February 13, 1948, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to $35.45 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 8th day of April, A. D. 1948.

(Seal) EDMUND L. SMITH
Clerk

By Theodore Hocke
Chief Deputy

[Title of District Court and Cause]

Honorable Paul J. McCormick, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, December 18, 1947

Appearances:

For the Petitioner: George H. O'Brien, Esq.

For the Respondents: Robert W. Gilbert, Esq., Clarence E. Todd, Esq. [1*]

Los Angeles, California, Thursday, December 18, 1947.

1:30 P. M.

The Clerk: No. 7859-M, Civil. Howard F. Lebaron, Regional Director of 21st Region of National Labor Relations Board v. Printing Specialties and Paper Converters Union, et al., for hearing petition for order to show cause.

The Court: Proceed, Mr. O'Brien.

Mr. O'Brien: This is definitely an extraordinary proceeding, both for me and for the court. It is a new jurisdiction conferred upon this court by Section 10(1) of the Labor-Management Relations Act of 1947.

My motion this morning, if it please the court, is for entry of an order to show cause, if any there be, why the respondents named in the petition filed here yesterday should not answer and reply. In substance, that is my motion.

I am not prepared to argue the merits of the case at this time, although if necessary I can do so. I do

*Page number appearing at top of page of original Reporter's Transcript.

suggest that the court require the respondents Printing Specialties and Paper Converters Union, Local 388, A.F.L., and Walter J. Turner, who are here today represented by counsel, to appear and answer this complaint on a day certain to be set by the court.

The Court: Counsel appear to be here. Is there any objection to the motion, gentlemen?

Mr. Todd: If your Honor please— [2]

The Court: Gentlemen, if you will state your appearances, please. We have a new clerk, and I think he is not familiar with the counsel.

Mr. Todd: I am Clarence E. Todd, and I appear with Mr. Robert W. Gilbert. We two represent the respondent to be if this order is made.

Our contention, if your Honor please, is that the portion of the Labor-Management Relations Act, commonly known as the Taft-Hartley Act, which is invoked here, is wholly unconstitutional, and our appearance will be special for the purpose of making that contention, and that contention will be adhered to throughout any proceedings that may be had.

Our objection to this preliminary procedure is that it is an idle act on the part of the court to receive the petition and to issue the order to show cause. We are quite ready to argue the merits, also, but, of course, this is not the place or the time for that to be done; but we question the jurisdiction of the court and we contend that we have ruling authorities to the effect that this portion of the Act is wholly unconstitutional and no judgment could be issued by this or any other court in enforcement of the portion of the Act which is invoked.

The Court: The section cited by counsel, as far as it is material, reads thus:

Section 10, isn't it? [3]

Mr. O'Brien: 10(1), sir.

The Court: Under the title "Prevention of unfair labor practices," Section 10(a):

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise; Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

Subsection (1) of the Act provides thus:

> "Whenever it is charged that any person has [4] engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.

If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued [5] without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: Provided further, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly

authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D)." [6]

The court has before it a copy of the petition filed in this court December 17, 1947, and unless it is desired I shall not read it into the record, gentlemen. I have read it in chambers, and it seems to recite for the purposes of this proceeding, and not otherwise, sufficient cause to justify the issuance of an order to show cause.

Mr. Todd: Would your Honor hear me for just a moment?

The Court: Yes.

Mr. Todd: Would your Honor set down the motion for argument? That might save a good deal of time of the court.

The Court: I thought I would specify the return day, and then on that day we will hear such argument as you desire to present, and such other methods of approach. In other words, I see no difference between the ordinary processes in a suit in equity under the rules, except as modified by the procedure adopted in this Act, and this case.

Mr. Todd: Except that—I don't mean to interrupt your Honor.

The Court: Go ahead.

Mr. Todd: Since we raise the objection of lack of jurisdiction in limine, it might be appropriate—your

Honor might make some other order—it might be appropriate just to set the petition for the order to show cause for hearing. The petition sets out the facts on which it is based. If those facts are true, and the law is constitutional, certainly [7] you have a right to issue the order. If those facts are true and the law is unconstitutional, the facts certainly do not confer jurisdiction on the court.

The Court: That is the thought I had in mind. For a court to act, there must be a vehicle which brings the suitors before the court.

I appreciate the good offices of counsel for the respondents in coming here. They were not required to come, and it is appreciated that they have come. But, after all, in a matter of this importance the procedural steps should be very carefully taken, and one of the procedural steps necessary in an action in the courts is the issuances of a vehicle to bring the parties before the court for consideration, and I presume that in this case is the order to show cause.

When did you want it returnable, Mr. O'Brien, or gentlemen, if you can agree upon a date?

Mr. O'Brien: I suggested to Mr. Gilbert, after talking with Mr. Winthrop A. Johns who will argue the case before this court, December 30th. Of course, subject to the convenience of this court.

The Court: What is your attitude, gentlemen?

Mr. Gilbert: If that is convenient to the court, your Honor, that will be satisfactory to us.

The Court: I have a matter set on the 29th at 2:00 o'clock that may possibly run over into the next day. [8]

Mr. Todd: We would like as early a date as convenient to the court. If your Honor could give us one or two days after that, that would be all right with us.

The Court: How long do you think it will take to present the matter?

Mr. Todd: If your Honor please, it takes a little time to go into these constitutional matters. I believe that the constitutional points involved will be the same as in the recent hot cargo cases before the courts of California, and where we have had a day for argument it hasn't been too long.

The Court: I think you are entitled to that time. What it your estimate, Mr. O'Brien?

Mr. O'Brien: May it please the court, I regard the word "shall" in Section 10(1) as being mandatory. As fast as possible. I have talked with Mr. Winthrop Johns in Washington, who will argue this case before the court, and he says the earliest date that he can be out here is December 30th, and any date after that he will be available.

The Court: It would suit our calendar a little better to have it the week following New Year's Day, I think.

That matter that was on today, was that continued until January 6th, Mr. Clerk, that tax matter?

The Clerk: It was continued to January 8th, your Honor, at 2:00 o'clock. [9]

The Court: I think perhaps we might just as well set it for the 30th, as later. The order to show cause will issue and be made returnable on December 30th at 10:00 o'clock, the morning of that day, and we will allow

that entire day, and, if necessary, over into the next day for argument.

I would like to have the memoranda under the rules, gentlemen. I presume you are all familiar with our rules, although I am not sure that you are all familiar with the rules. We have a rule here that requires the submission of memoranda before the hearing of these motions, and if you will consult that and comply with it so that the court will have your memoranda a few days before the argument, it will facilitate the hearing of the return.

Do you have your order to show cause in form, Mr. O'Brien?

Mr. O'Brien: Yes, sir, and I have submitted copies to counsel.

In the order to show cause, if it please the court, it requires three things: one, the date of return, which has already been settled; two, a date for answer, which has not been discussed, and I am perfectly willing to waive that; and, three, requiring service by the United States Marshal, which again might be changed on the form of the order.

The Court: You say you are waiving the provisions on [10] lines 16 to 22 on page 2 of the proposed order, Mr. O'Brien?

Mr. O'Brien: I think that would be proper, sir.

The Court: That will be stricken, then.

Order to show cause, issued, returnable on the 30th of December at 10:00 o'clock.

Mr. Gilbert: May it please the court, just before this matter is completely disposed of, I wonder if it would be permissible to inquire whether any affidavits which

the Board might submit in support of its petition will be served with the order to show cause? I don't believe that the latter part of the order to show cause specifies so, but I just wanted to ask as a matter of information what procedure would be followed.

The Court: Are there any affidavits to be filed in addition to the pettion, Mr. O'Brien?

Mr. O'Brien: No, may it please the court. In rechecking these documents I found two defect in the petition itself. The first one, on page 2, line 9, a temporary restraining order is not requested. I think that is clear from this proceeding now. The words "temporory restraining order" should be deleted. But, again, I do not consider that material.

On page 2, line 32, a copy of the charge is not attached, and as to that I am very sorry, it is due entirely to my own negligence that it was not attached. However, we do have [11] parties here who have received copies of the original charge.

Mr. Gilbert: That is correct.

The Court: That portion is waived without any waiver of the constitutional objection.

Mr. Gilbert: Yes.

The Court: I presume that answers your question, then, does it, Mr. Gilbert?

Mr. Gilbert: That is right.

The Court: Nothing further, gentlemen?

(No response.)

(Whereupon at 2:00 o'clock p. m. court adjourned.)

[Endorsed]: Filed Apr. 7, 1948. Edmund L. Smith, Clerk. [12]

[Title of District Court and Cause]

Honorable Paul J. McCormick, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Tuesday, December 30, 1947

Appearances:

For the Petitioner: Robert N. Denham, General Counsel, by Dominick Manoli, Esquire, and George H. O'Brien, Esquire, 111 West 7th Street, Room 704, Los Angeles 14, California.

For the Respondents: Robert W. Gilbert, Esquire, Clarence E. Todd, Esquire, and Allan L. Sapiro, Esquire, 117 West 9th Street, Los Angeles 15, California. [1]

Los Angeles, California, Tuesday, December 30, 1947, 10 A. M.

The Court: Mr. Carter?

Mr. James M. Carter: If the court please, in the matter pending in this court, Lebaron v. Printing Specialties, I want at this time to move the admission of two attorneys who are not members, as I understand it, of the State Bar of California, for the purpose of appearing in this case alone. One of them is Dominick Manoli, who is an attorney for the National Labor Relations Board, is a member of the bar of the Supreme Court of the United States, the Federal District Court in Nebraska and the State Bar in Nebraska. The other gentleman is Mr. George O'Brien, member of the bar of the Supreme Courut of Illinois and the District Court for the Northern District of Illinois, and is also a member of the bar of the Ninth Circuit. I am personally acquainted with Mr. George O'Brien, have been for a

number of years. Both of these men are attorneys for the National Labor Relations board, and the casual check of the code which I have had a chance to make indicates that under the express wording of the statute the attorneys for this Board possess the statutory right to commence civil litigation. I, therefore, move the admission of these gentlemen for the purposes of this case.

The Court: Any objection, gentlemen?

Mr. Gilbert: No objection. [2]

The Court: For the purposes stated they will be admitted.

Call the case, Mr. Clerk.

The Clerk: 7859-M, Civil, Howard F. Lebaron v. Printing Specialties and Paper Converters Union, et al.; order to show cause why respondents should not be restrained as prayed in petition, and motion of respondents to dismiss petition for an injunction. Attorneys Gilbert and Todd appear for the respondents. Attorneys Manoli and O'Brien appear for the petitioners.

The Court: Are you ready, gentlemen?

Mr. Todd: Yes.

Mr. O'Brien: Yes, we are ready, your Honor.

The Court: We will have to segregate the argument, gentlemen, on these matters. At the previous hearing the court stated that the argument would be permitted to not exceed one day of court time. We will divide the argument two hours on each side, with the respondent having the right to open and close the argument. But the opening must be an opening and not simply the holding in reserve of matters that are not disclosed in the opening.

You may proceed.

Mr. O'Brien: Your Honor, I have a copy of the Act here.

The Court: I have the Act in the code.

Mr. O'Brien: Very well. [3]

Mr. Gilbert: If it is agreeable with the court, with respect to the matter of the opening argument on behalf of the respondents, Attorney Todd and I would like to divide the time which you have allotted to us.

In this proceeding, if it please the court, there is on file, as the court well knows, a petition for an injunction filed by the petitioner under color of authority of Section 10(1) of the National Labor Relations Act as amended. In substance I believe that the petition seeks to invoke that portion of Section 10(1) purporting to confer jurisdiction upon this court to grant injunctive relief against activities proscribed by paragraph (4)(A) of Section 8(b) of this Act, as amended on June 23, 1947. The pertinent portions of Section 10(1) and 8(b)(4)(A) of the Act, we believe, are as follows, quoting first from Section 10(1):

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A)"—then omitting some language—"of Section 8(b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable [4] cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any

district court of the United States"—omitting language—"within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: . . ."

The balance of Section 10(1) deals with a proviso with respect to the matter of a temporary restraining order without notice, which is not raised in this proceeding, and the matter of the jurisdiction over a particular labor organization in terms of the district wherein such jurisdiction purports to lie. Then Section 10(1) states:

"The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit."

The balance of the section deals with matter forbidden by [5] Section 8(b)(4)(D) of the amended Act, and not applicable herein.

Section 8(b)(4)(A), the section incorporated by reference in Section 10(1), as invoked in this proceeding states, insofar as is relevant to this proceeding:

"(b) It shall be unfair labor practice for a labor organization or its agents—

* * * * * * * *

"(4) To engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is: (a) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . ."

The petition which has been filed recites in paragraph 5 on page 2 that:

"On or about November 18, 1947, Sealright [6] Pacific, Ltd. (hereinafter called Sealright), pursuant to the provisions of Section 10(b) of the Act, filed a charge alleging that respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b), subsection (4)(A) of the Act and affecting commerce within the meaning of Section 2(6) and (7) of the Act."

The petition thereafter recites that:

"A copy of said charge is attached hereto marked 'Exhibit 1' and made a part hereof."

In completing service upon the respondents in this matter the conformed copies of the petition and order to show cause did not have attached to them copies of the charge, but counsel for the respondents are familiar

with and have received otherwise copies of that charge and make no objection on that ground. I would like to be permitted to inquire of the court, however, whether a copy of that charge is now an official part of the record.

The Court: I am just now examining the file again this morning to ascertain that. It is not there, unless it has been placed there recently. There is not appended to the copy which was supplied at the time of the filing of the petition the charge.

Mr. Manoli: We will file a copy, your Honor. [7]

The Court: It was not filed, was it?

Mr. Manoli: Apparently it was not. I was not aware of that.

The Court: I haven't seen that. I want to look at it, if you will first submit it to counsel.

(The document referred to was handed to the court.)

The Court: It may be considered as a part of the record, gentlemen?

Mr. Gilbert: Yes, your Honor.

Mr. Manoli: And may we have leave to substitute copies for that, your Honor? It is the original.

Mr. Gilbert: No objection.

The Court: Yes. The court has perused the instrument.

Mr. Gilbert: The charge referred to as Exhibit 1 in substance employs the language of Section 8(b)(4)(A) of the statute itself to allege that the respondent, Local 388, "engaged in, induced and encouraged the employees of L. A. Seattle Motor Express and the employees of West Coast Terminals Co. to engage in a concerted

refusal in the course of their employment to transport or otherwise handle any goods, articles, materials or commodities of Sealright Pacific, Ltd., for the purpose of forcing or requiring L. A. Seattle Motor Express and West Coast Terminals Co. to cease handling, transporting or otherwise dealing in the products of Sealright Pacific, Ltd., or to cease doing business with Sealright [8] Pacific, Ltd."

Without taking the court's time to read the charge, which the court has before it, the acts alleged in this charge to have been committed by respondent, Local 388, stripped of legal conclusions, in essence amount to a threat of picketing the L. A. Seattle Motor Express and picketing in the vicinity of the warehouses of the West Coast Terminals Co.

The petition itself relates that the charge involved was referred to the regional director of the 21st Region of the National Labor Relations Board, the petitioner herein; that the petitioner investigated the charge, and believes it to be true. And in specifying the acts, again which the respondent local union is alleged to have committed and which is the sole basis for the filing of the petition herein and the claim for the right to injunctive relief under this statute, are acts set forth in paragraph 7, subparagraph (c), (d) and (f), found on pages 3 and 4 of the petition.

(c) is:

> "On November 13, 1947, respondent Walter J. Turner, vice-president of Local 388, advised L. A. Seattle that if it continued to handle Sealright's products, L. A. Seattle would be picketed by Local 388."

(d) is that: [9]

> "On about November 14, 1947, representatives of Local 388 followed two trucks loaded with Sealright's products to the L. A. Seattle terminal where by forming a picket line around the two trucks containing the products of Sealright and telling the employees that the trucks contained 'hot cargo' and not to 'handle it,' induced and encouraged"—using the statutory language—"the employees of L. A. Seattle, by orders, force, threats, or promises of benefits, not to transport or handle the goods of Sealright."

In connection with this portion of the petition I would like to call the attention of the court to the language of Section 8(c) of the Act herein involved:

> "The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

It will be the position of the respondents throughout this proceeding that the inclusion of the language in the petition herein "by orders, force, threats, or promises of benefits," constitutes merely a conclusion of law, to be [10] disregarded by the court, and that in fact this language is simply inserted in the petition for the purpose of immunizing this proceeding from the effects of the proviso set forth in Section 8(c) of the amended Act. So that if the factual material in paragraph 7(d), from which I have just read, were considered alone by

the court, without such a conclusion of law, in effect the acts alleged would be that representatives of Local 388 formed a picket line around the trucks which they located at the L. A. Seattle terminal containing the products of Sealright, told the employees certain things, and requested them, or to use the language of the statute which the petition uses "induced or encouraged" them not to transport or handle the goods of Sealright.

The remainder of the paragraph alleges that after this picketing took place, the employees of L.A. Seattle refused to transport or handle the goods of Sealright; and reading from the bottom of paragraph 7 (d) the statement that:

> "Local 388 engaged in the foregoing conduct to force or require L.A. Seattle to cease handling or transporting the products of Sealright."

There again, is a reliance upon the statutory language.

Paragraph (f) alleges that:

> "On November 17, 1947, while employees of West Coast were engaged in loading the rolls of paper" described in the preceding paragraph "onto [11] freight cars consigned to Sealright in Los Angeles, a group of pickets representing Local 388 appeared at the docks of West Coast and, by forming a picket line around the freight cars being loaded with the rolls of paper for Sealright,"—again the statutory language—"induced and encouraged the employees of West Coast,"—and, again, this language is couched similar to the terms of Section 8(c)—"by orders, force, threats, or promises of benefits, not to handle or work on the paper consigned to Sealright."

Then there is a further allegation of the refusal by the employees of West Coast to handle or work on the goods consigned to Sealright, and an allegation which, in effect, might be paraphrased as an allegation that an object of this picketing was to force or require West Coast to cease handling or transporting the products of Sealright, again couched in the statutory language.

Respondents desire to move this court to dismiss this petition on the ground that the court lacks jurisdiction over the same. It is stated in the notice of motion that it is the contention of the respondents that this petition was filed under color of authority of that portion of Section 10(1) of the amended Act, incorporated by reference, paragraph 8 (b)(4)(A) of said Act "whch purports to confer juris- [12] diction upon this court to grant injunctive relief against activities proscribed" by that latter paragraph, and that such portions of the statute as invoked herein are contrary to the Constitution of the United States, Amendments I, V and XIII, and are therefore wholly invalid and without any legal force and effect; that the sole allegation relating to the jurisdiction set forth in the petition herein is based upon the same statutory proceeding, and we move this court to dismiss this proceeding on the ground that the court lacks jurisdiction over the person of the respondents and over the subject-matter of this proceeding for the lack of jurisdiction, and on the ground that the petition prays for injunctive relief against lawful acts of respondents, which relief in substance and form would be contrary to the Constitution of the United States, Amendments I, V and XIII, and that no other claim upon which relief can be granted has been stated.

The prayer for injunctive relief to which I have referred is set forth on page 5 of the petition, and the acts which the petitioner seeks to have enjoined by this court are set forth again in the statutory language:

> "(a) Engaging in or inducing or encouraging the employes of West Coast Terminals Co. and Los Angeles Seattle Motor Express, Inc. by orders, force, threats, or promises of benefits, or by [13] permitting any such to remain in effect, or by any other like acts or conduct, to engage in a concerted refusal in the course of their employment to transport, or otherwise handle any goods, articles, materials, or commodities, or perform any services in order to force or require West Coast Terminals Co. and Los Angeles Seattle Motor Express, Inc. to cease handling, transporting the materials or products of Sealright Pacific, Ltd., or to cease doing business with Sealright Pacific, Ltd."

The second prayer for injunctive relief in paragraph (b) requests a substantially similar order affecting the employees of any employer, but omits the language relating to "orders, force, threats, or promises of benefits."

Respondents raise the issue here as to whether or not Section 10(1), to the extent that it incorporates Section 8(b)(4)(A) of the amended Act, and purports to confer jurisdiction upon this court to restrain acts such as those alleged to have been committed by the respondent, Local 388, herein, namely, picketing and the threat of picketing in connection with a lawful strike over the issue of wages and holiday pay, picketing and threat of picketing the products of the struck plant, if the court please, produced under strike conditions,—whether or

not such a provision of law [14] is not contrary to the cognate rights of free speech and assembly set forth in the first amendment to the Constitution of the United States, and whether its object and its effect, if enforced and carried out, would not amount to a deprival of liberty without due process of law, contrary to the fifth amendment of the Constitution, and whether or not the injunctive relief sought herein does not or would not contravene the thirteenth amendment to the Constitution, prohibiting involuntary servitude.

We have requested and received permission of the court to divide this argument, and I will not, in order to avoid repetition, dwell at great length upon the numerous authorities which we have cited in our memorandum of points and authorities, which Attorney Todd would like to present to this court, but I would like to state at the commencement of this portion of the argument that the basic position of the respondents is set forth in paragraphs 3 and 4 of our memorandum of points and authorities, namely, that peaceful picketing and threat of peaceful picketing which constitute the only charges made against respondents in this proceeding come within the constitutional safeguards of the First Amendment; and that, fairly construed and with conclusions of law eliminated, the petition herein merely charges respondents with picketing and threatening to picket the products of the employer with whom a labor dispute is pending, and that [15] picketing of such unfair products is well recognized as coming within the protection of the First Amendment. There is appended to the notice of motion to dismiss this petition an affidavit of one of the respondents herein, Walter J. Turner, whose affidavit is, of curse, in the record and I shall not attempt to

take the time of the court to read all of its many details, but in sum and substance it describes the respondent, Local 388, as a labor organization including within its membership approximately 1,800 employees of the paper conversion and allied industries in the city of Los Angeles and nearby communities. It sets out the fact that Local 388 is a party to numerous collective bargaining agreements in this industry with various employers and its members engaged in the manufacture, distribution and sale of products, paper products comparable to the paper food containers and milk bottle caps produced by the charging party in this proceeding, Sealright Pacific, Ltd. Some of these products are set forth in lines 8 and 9 of page 2 of the Turner affidavit: envelopes, paper boxes, waxed paper, manifold sales books, et cetera.

It sets forth in the paragraph immediately following, in lines 12 to 19, of page 2 of the affidavit, the fact that Local 388 has consummated agreements covering approximately 1,500 of its members and establishing certain prevailing scales of minimum wages, which are set forth in the exact [16] sums in the affidavit; but all of these agreements covering some 1,500 members of the union, negotiated within the immediate past 12 months, provide at least six paid holidays for those members of Local 388.

The following paragraph describes the history of bargaining between Sealright Pacific, Ltd. and this local union from 1941 to 1946, during which successive collective bargaining agreements were negotiated without any strike, lockout, or other similar interruption of production taking place.

The affidavit proceeds to relate the circumstances under which the former contract, the latest contract, was

opened, and it is worth noting here that Local 388 complied with Sections 8(d)(1) and 8(d)(3) of the amended Act, by giving the company the required 60-day notice of the proposed modifications in the agreement, and on September 15, 1947 by notifying the Federal Mediation and Conciliation Service and the California State Department of Industrial Relations that a dispute existed, as set forth on lines 14 to 17 at page 3.

The following paragraph describes the content of those negotiations and points out that after a number of meetings, some eleven meetings, the parties were agreed on all terms of the new agreement except wage rates and holiday pay; that the company's offer was substantially below the prevailing rates established by the union for some 1,500 members; that [17] the company offered for the seventy-odd members of the union employed at its plant a raise from $1.02½ to $1.10 per hour, whereas the prevailing wage rate ranged from $1.20 to $1.33½ per hour for the lowest skilled job performed by a man in the plant. Similarly, the union detailed similar inadequate rates as proposed by the company for the lowest skilled female classification in the plant and, as related at the top of page 4, the company's proposal with respect to holiday pay was merely a continuation of the three designated holidays, although the union had established for a preponderance of its members, some 1,500 in the industry, the prevailing standard of six paid holidays.

The strike which gave rise then to the picketing complained of herein was a strike solely over the issues of wages and holiday pay, based upon the desire of the members of Local 388 to protect the standards which they had established in the paper conversion and allied industries in this area by means of negotiated agreements with various employers during the past 12 months.

As set forth in the next to the last paragraph on page 4, at the time the strike was instituted all of the approximately 70 production employees of the plant were members in good standing of the union and no question of majority status was raised by that fact. All but three employees of said plant joined said strike against their employer. Peaceful [18] picket lines were established in front of or near the entrances to the struck plant.

The succeeding paragraphs of the Turner affidavit describe the conduct of the respondents in connection with the incidents in statutory rather than factual language by the petitioner herein.

It is admitted in the Turner affidavit that at some time between November 3, 1947 and November 17, 1947 Mr. Turner met and conferred with a Mr. Lacey, supposedly the manager of Los Angeles Seattle Motor Express; that at that time Mr. Turner, the secretary-treasurer of the union, informed L. A. Seattle Motor Express that Local 388 was engaged in a strike due to a wage dispute with its employer, Sealright Pacific; also informed him that Local 388 intended to peacefully picket the Sealright products manufactured under strike conditions and a sub-standard wage for the purpose of publicizing the dispute and soliciting the assistance of other workers, asking that they decline to handle this merchandise. At no time did affiant advise Los Angeles Seattle Motor Express that Local 388 would picket all or any of that firm's operations, as such, if it continued to handle Sealright products, nor did Mr. Turner in any way indicate or imply that Local 388 would picket any other products being handled or transported by the L.A. Seattle Motor Express for companies other than the struck plant under [19] any circumstances whatsoever.

On or about November 14, 1947 members of the union on strike at Sealright in this wage dispute, it is admitted by this affidavit, formed a peaceful picket line around two truckloads of Sealright products at the Los Angeles Seattle Motor Express terminal; that these members of the union advised the employees of the motor truck concern that the Sealright products were manufactured under strike conditions and for sub-standard wages and requested them not to handle those products. At no time did any officer, agent, representative, or member of the local union order, force, threaten any reprisal against or promise any specific benefit to any employee of that concern for the purpose of bringing about the refusal of said employee to transport or handle Sealright products, or for any other purpose.

It is also admitted in the following paragraph of the affidavit that on or about the 17th day of November of this year, and for several days thereafter, Local 388 peacefully picketed Sealright products being loaded onto three boxcars at the West Coast Terminals Company; that these products consisted of rolls of paper consigned from a New York plant of Sealright, the struck employer, to the Los Angeles plant of that corporation for use in continued manufacturing operations under strike conditions. At no time has Local 388 picketed any or all of the operations of the West Coast [20] Terminals Company, as such, nor has Local 388 picketed any other products being handled or transported by said firm for companies other than the struck plant. At no time has Local 388 interfered in any manner with the loading or unloading of any ship or ships of the Panama Pacific Lines or of any other steamship company.

The following paragraph and the next concluding paragraph of the affidavit describes the fact that this picketing of the boxcars containing Sealright products took place alongside a siding near the warehouse; that the picket lines did not pass in front of the entrance to the warehouse, and that when during the course of the picketing it was necessary for the Terminal Company to move those cars incidental to its other operations Local 388 temporarily discontinued its picketing to permit it, rather, Local 388 temporarily discontinued its picketing and there was no interference with the moving of these boxcars, and when the cars had been moved on several occasions and returned to their previous position, then the picketing was resumed.

Again there is a denial in the affidavit that any force or promise of benefit or threat of reprisal or order of any sort was made by any representative of Local 388 to the employees at the West Coast Terminals Company. With this factual background set forth in the affidavit, we believe that the issue is very sharply presented, as to whether or not the members of the respondent union and the representatives of the respondent union [21] have a right to seek to persuade employees of companies other than their own employer not to lend their assistance to the struck plant, and whether or not they have a constitutional right to seek to disseminate the fact of the labor dispute in the hope that they may be able to convince other working people of the merits of their cause within the immediate area of the industrial dispute by picketing the products manufactured at the struck plant under strike conditions and at wage rates below the level established by the union in the industry in the community.

specifically the language of Section 8(b)(4)(A) does not mention picketing as such, as it does not mention speech as such. It seeks to embrace in verbal speech the communication of ideas by means of carrying a placard back and forth in the vicinity of the plant, and, apparently, other means of communication of the labor dispute by the very broad language which would make it an unfair labor practice for a union or its representative to induce or encourage the employees of an employer to strike or concertedly refuse to handle the products of the struck plant. Such language has been passed upon by the Supreme Court of the United States in the various cases identifying picketing with free speech. And the issue here is particularly vivid in the minds of the members of the local bar because on October 3, [22] 1947 the Supreme Court of this State applied the constitutional guarantees set forth in the First Amendment to strike down a State law which, in effect and with similarly vague language, sought to include within its ambit activities within the protection of the guarantees of free speech and assembly. Of course, I am referring to the case of In re Blaney, which is cited under point I of our memorandum of points and authorities. This decision of the Supreme Court of the State of California, like the decision of a three-judge court sitting in the District of the State of Kansas, in the case of Stapleton v. Mitchell, which is reported at 60 Fed. Supp. page 51,—

The Court: Is that cited in the memorandum? I don't remember it.

Mr. Gilbert: I don't believe it is, your Honor.

The Court: You say 60 Fed. (2d),—what page?

Mr. Gilbert: Federal Supplement, your Honor, page 51. We believe that both of those decisions are highly

persuasive authority, that they rely expressly upon the decisions of the Supreme Court of the United States, identifying the right of picketing with free speech and delimiting and defining the scope of this constitutional right to disseminate the facts of a labor dispute.

The Court: Pardon me, Mr. Gilbert.

Mr. Gilbert: Yes, your Honor. [23]

The Court: Was that last citation a decision under the Labor Management Act of 1947?

Mr. Gilbert: No, your Honor. Like the California case, it is a decision under a State statute, the so-called Kansas Industrial Peace Act, but the language and the design and plan of these State laws invalidated by these decisions is extremely comparable to the provisions under attack in the present proceeding.

In the Blaney case the Supreme Court of the State of California dealt with the so-called "hot cargo" and secondary boycott act of this State, which defined a secondary boycott as "any combination or agreement to cease performing or to cause any employee to cease performing any services for any employer, or to cause any loss or injury to such employer, or to his employees, for the purpose of inducing or compelling such employer to refrain from doing business with, or handling the products of any other employer because of a dispute between the latter and his employees or a labor organization."

That particular provision of California law which was held invalid as contrary to the protections of the First Amendment contained as well a so-called separability clause, which I would like to touch upon briefly. That separability clause, set forth in Section 1136 of the

Labor Code of the State of California and a part of this general Act stated: [24]

> "If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, or the application of such provisions or persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

The comment of the court in the decision in that case by a vote of six members of that court was that that separability clause could not save the Act and that the Act was subject to objection because its language was so vague and indefinite that men of common intelligence might differ as to its meaning and application; and, further, that its terms were so sweeping and broad as to include within its scope acts which the State might lawfully prohibit, and speech and assembly which the State might not lawfully prohibit, and since the provisions of that Act, generally describing the prohibited conduct, were not mechanically severable, there was not a section directed to picketing, a section directed to a publication of an unfair list, a section directed to making speeches at meetings, a section directed to, let us say acts of violence, and so on, mechanically severable so that the various descriptions of conduct described or proscribed might be segregated by the court, the court had no choice but to invalidate the entire Act. [25]

The Court: Is there any provision in the California statute that used, either expressly or synonymously, the word "force"?

Mr. Gilbert: The California Act uses the word "compelling,"—uses the term "for the purpose of inducing or compelling."

Now, I confess, your Honor, difficulty with some of these very broad terms like "promises of benefits" or "threats of reprisal," or "inducing" or "encouraging" or "compelling," rather than a description of the subjective acts.

The Court: I am speaking of "force," not the other connotations.

Mr. Manoli: The word "force" is not used.

Mr. Gilbert: The word "force" is not used. There is the term "compelling," which would be perhaps the closest approach to it, alhough that would perhaps call for an analysis of the legislative intent.

The Court: Isn't the connotation of the word "force" perhaps the enforcing of some physical effort?

Mr. Gilbert: I think so.

The Court: I am not speaking of the economical purpose. I am speaking of physical acts.

Mr. Gilbert: Of physical acts. Of course this Act itself does not describe the prohibited conduct in terms of using force, or compelling, or inducement, or reprisal. [26]

The Court: You are speaking of the Federal Act now?

Mr. Gilbert: The Federal Act. It only refers to threat of reprisal or force or promise of benefit in Section 8(c), to which I have referred.

The Court: The terms there used are as follows:

> ". . . if such expression contains no threat of reprisal or force or promise of benefit."

Mr. Gilbert: Yes. And it is interesting to note there—

The Court: Let's follow it a little further to get your views of the analogy of the decision of the California Supreme Court. It is conceded by your associate, as I understand it, in the Federal Act there is a differentiation, in that the Federal Act uses the word "force," and there is no use of such word in the California statute.

Mr. Gilbert: That is true.

The Court: Is it your argument that the use of the word "force" in the Federal statute is so broad and all-inclusive that it would necessarily involve these other features that were discussed in the main opinion of the California Supreme Court?

Mr. Gilbert: No, your Honor. I believe that the problem here is raised by the fact that the terms "threat of reprisal or force or promise of benefit" are used in the alternative; in the disjunctive rather than in the conjunctive; that the expression of any views will not constitute or be [27] evidence of any unfair labor practice under the Act if it does not contain force, that is one thing, but then it states in the alternative "or threat of reprisal or promise of benefit," so that it is not limited simply to situations in which force exists.

We would concede, and I know that my associate would certainly want to elaborate upon the fact that there is clear indication by the Supreme Court that where force or violence is present a basis exists under existing law for relief. In other words, that a State may adopt as a matter of policy, or the Federal Government could adopt as a matter of policy the idea of injunctive relief against acts of force or violence. But in the present statute, and in the petition itself filed in this action there is no allegation that force of any sort was em-

ployed. The affidavit of Turner clearly establishes the completely peaceful character of the picketing, and the language used in the petition is again in this disjunctive sense, that the respondent by threat of reprisal, order, or force, or promise of benefit brought about this result, with no factual material supporting that conclusion of law based upon the statutory language.

The Court: Is there a statutory provision in the Federal Act of segregation of rights, as there is in the State statute which you have just read?

Mr. Gilbert: The separability provision? [28]

The Court: Yes.

Mr. Gilbert: Yes, Section 16.

The Court: Read that.

Mr. Gilbert: "If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

It is almost verbatim from the separability provision in the California statute. In that connection I would like to call the attention of the court to Section 12, or, rather than that section, it refers to a section immediately following Section 12 of the Kansas Statute invalidated in Stapleton v. Mitchell, and the portion of the statute to which I have referred is found in 60 Federal Supplement, page 56, where the court says:

> "The Act also contains a severability clause to the effect that if any provision of the Act or the application thereof," and so on, using almost identical language with Section 16 of this Act.

The Court: Supposing there had been the use of the word "force" in the California statute, do you think the main opinion of the court would still stand? [29]

Mr. Gilbert: If I understand the question of the court, it is as to whether if in the California statute there had been an effort to prevent interference with the handling of goods or merchandise by force,—

The Court: That is not what I said.

Mr. Gilbert: I am trying my best to understand. (Continuing) —if there was language in the California statute which made unlawful a combination or agreement or any act to cause any employee to cease performing services by force or threat of reprisal or promise of benefit, I would believe that the decision would be exactly the same. To summarize the basic position which I have attempted to outline, I would like to just make brief reference initially to the language contained in the Kansas statute invalidated in Stapleton v. Mitchell. There subsection 12 of Section 8 of that Act was declared by the court to be unconstitutional and void on its face, making it unlawful for any person to refuse to handle, install, use or work on particular materials or equipment and supplies because not produced, processed, or delivered by members of a labor organization. And, also, the court held invalid and void on its face Section 8(3) of that statute, making it unlawful "to participate in any strike, walkout or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed, . . ." [30]

There was in the Kansas statute a provision, Section 12, "except as specifically provided in this Act, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the

right of individuals to work; or shall anything in this Act be so construed to invade unlawfully the right to freedom of speech."

That is the so-called saving clause.

There is a so-called saving clause in Section 502 of the entire Labor Management Relations Act of 1947 of similar scope. The result in the Stapleton case, as in the Blaney case in California, was to state that individual citizens should not be placed upon their peril to determine whether or not conduct, which is traditionally regarded as an exercise of their right of free speech, publication and assembly falls within the purview of the statute which expresses its prohibition in vague and indefinite terms.

We have cited to the court in this connection in point VII of the memorandum of points and authorities the various decisions holding that a statutory provision which does not aim specifically at particular evils, but attempts to blanket conduct in general terms and sweeps within its ambit activities that in ordinary circumstances constitute an exercise of freedom of speech would be held to be invalid on its face. And under point VIII we have dealt with the [31] doctrine as to vague, indefinite and uncertain terms, as set forth by the Supreme Court of the United States, and as applied in the Blaney case, and in another picketing case, the Bell case, by the Supreme Court of the State of California.

We have also dealt in this memorandum, and I will not now belabor the separability clause in Section 16, with the fact that where there is no possibility of mechanical severance, but the general language of the statutory provision covers both activities which might be

prohibited and activities which might not, that the entire section must be nullified.

Finally, there is here the entire question of involuntary servitude. That matter is dealt with briefly in the case of Stapleton v. Mitchell. The petition herein seeks to secure injunctive relief against members of Local 388, and Mr. Turner, from engaging in a concerted refusal in the course of their employment to transport, or otherwise handle any goods, and from inducing or encouraging others by orders, force, threats, or promises of benefits, or by any other like acts or conduct to engage in a concerted refusal to handle these struck products.

There is one statement that I would like to quote from, which is set forth on page 2 of the memorandum, which I think is the nub of this case. It is a statement of Mr. Justice [32] Rutledge in the case of Thomas v. Collins, that:

> ". . . 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts . . . and the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members, or others to assemble and discuss their affairs and to enlist the support of others."

Again, Mr. Justice Rutledge in another portion of the same opinion, for the court states:

> ". . . Indeed, the whole history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that the protections are given."

Whether the device, the statutory device, to narrow the circle of a labor dispute is that it only includes an employer and his own employees, and would prevent members of the public or prevent including other working people from getting the facts of the dispute, whether that is achieved by a statutory definition of the term "labor dispute,"—

The Court: Pardon me, Mr. Gilbert. I will have to interrupt to answer a phone call. One of our judges is very sick, and I would like to answer a call from his wife. We [33] will recess for about five minutes.

(A short recess was taken.)

The Court: I am sorry to interrupt you, gentlemen. You may proceed.

Mr. Gilbert: In the memorandum of points and authorities there is reference to two cases standing for the proposition that whatever the legislative judgment, the court must determine independently in the light of our constitutional tradition whether a clear and present danger of the gravest abuses endangering society as a whole exists to justify the intrusion upon the domains of free speech and assembly, which we believe are created by virtue of Section 10(1) and Section 8(b)(4)(A) of the amended Act.

It is true, as was stated by the court in the Thomas case, that:

> ". . . Where the line shall be placed in a particular application rests, not on such generalities, but on the concrete clash of particular interests and the community's relative evaluation both of them and of how the one will be affected by the specific restriction, the other by its absence."

The answer to the question as to where that line can constitutionally be placed under our tradition can be affirmative to supporting an intrusion upon the domain of [34] free speech only if grave and impending public danger requires, and we believe that there is no showing, either in the legislative history of this particular statute, or the facts that may be gleaned from an analysis of the factual matter in the petition or the charge filed in this proceeding that such an injunction against peaceful picketing and other forms of free speech and assembly is warranted by an immediate threat to the existence of our society, as we have known it.

I appreciate the courtesy of the court in listening to this portion of the argument, and I would like now to retire in favor of Mr. Todd.

Mr. Todd: May it please the court, would your Honor indicate exactly the amount of time that I have left?

The Court: I think I took out about twenty-five minutes. That would leave you about an hour and thirty-five minutes.

Mr. Todd: If I have an hour, I would like to reserve half of it for rebuttal, because we haven't been favored with any brief by the complainant, and I would like to be able to answer them.

The Court: Yes. I noticed that the government has not complied with the local rule with respect to a memorandum. If you gentlemen are going to practice in this district you had better get a copy of our local rules and read them, and be governed accordingly. [35]

Mr. Todd: May I move that any particularity may be suspended, if the court please?

The Court: We will take that under advisement.

Mr. Manoli: We shall want to submit a memorandum, your Honor.

Mr. Todd: With regard to the question asked by your Honor about the use of the word "force," which is not found in the California Act, but is found in the Federal statute which we have before us. I call your Honor's attention to the fact that the word "force" is not used in describing the offense. The offense is described in substantially the same language as found in the "hot cargo" Act. In legal effect, the legal phraseology is not exactly the same.

I shall want to show you in a few minutes, as far as I have time, the pattern, the definite pattern laid down by the Supreme Court of the United States, and, incidentally, by the Supreme Court of California also, as to the allowable limits of picketing, and the use of force is absolutely outlawed by both courts. Any use of force in connection with picketing is entirely unlawful.

I might refer just very briefly to the decision of the Supreme Court of California in the Bell case, which is reported at 19 Cal. (2d) 488, and I want to refer very briefly to page 491, in which there appears the test of an ordinance of the County of Yuba, which was invalidated by the Supreme Court of [36] California insofar as it sought to prohibit peaceful picketing, and the particular section referred to there is:

> "It is unlawful for any persons to beset or picket the premises of another, or any approach thereto, where any person is employed or seeks employment, or any place or approach thereto where such employee or person seeking employment lodges or

> resides, for the purpose of inducing such employee or person seeking employment, by means of compulsion, coercion, intimidation, threats, acts of violence, or fear to quit his or her employment or to refrain from seeking or freely entering into employment."

Now, the portion of the ordinance which sought to prevent peaceful inducement of a person working at a certain place through a picket line was set aside, but insofar as the ordinance sought to prevent acts of violence or fear, it was upheld.

Similarly, I notice in the decision of the Supreme Court of the United States, that the case of Carlson v. California involved a statute of the county of Shasta. That decision is cited at 310 U.S. 106, and there was a long ordinance prohibiting anyone from carrying a banner, loitering in front of, or in the vicinity of, or to picket in front of, or in the vicinity of, or to carry, show or display any banner, [37] transparency, badge or sign in front of, or in the vicinity of, any works, or factory, "for the purpose of inducing or influencing, or attempting to induce or influence, any person from doing or performing any service or labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce any person. . . ."

That uses the word "intimidation" and uses the word "coercion," which our Supreme Court of California has defined as being perfectly lawful, if lawful means are used, and providing only peaceful means are used. That entire ordinance was set aside by the Supreme Court. That was a companion case to Thornhill v. Alabama, where the Alabama statute was set aside.

The issue here has been tendered by the government, and the issue is very narrow. The issue is really the lawfulness of three or four elements of the Taft-Hartley Act, which attempts to prohibit the boycotting or picketing of a product,—"hot cargo," in other words. That is the entire matter, that is the entire factual issue which is before the court, and we have it on the authority of Chief Justice Marshall, and I believe it was in the case of Ogden v. Saunders, and I have forgotten just what the case was about, but I know he said that the jurisdiction of the court is limited by the facts before the court. So that the court's [38] jurisdiction here, the court's power here is limited to a consideration of the facts that are before the court, and the facts before the court are, first, a statute which seeks to prevent the picketing of the products of a struck employer, and the acts alleged as constituting the offense are the acts of picketing those products.

As my colleague has pointed out, the use of the word "threat," or whatever the language is in that saving clause, is simply thrown in. It is really "fear," and that is really a frank way of presenting the issues here.

This section under which the court is proceeding, that is, the section purporting to set out the unfair acts, Section 8(b)(4)(A) is:

> "(4) To engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services where an object thereof is:

"(A) Forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other [39] producer, processor, or manufacturer, or to cease doing business with any other person;"

That must be read along with the language of subsection (c) later:

"The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promises of benefit."

That has to be read with it, and what it means is that if this encouraging or inducing an employer is carried on by means of speech, either oral or written, it is not unlawful unless it contains a threat of reprisal or force or promise of benefit. That is the language of the Act that must be given effect, and if it is given proper effect, under the very terms of the Act I submit there is no offense here. But I would like to go into the constitutional question which we had up for so many years in our fight against the "hot cargo" Act in California. The reason why the Blaney case cited by Mr. Gilbert is pertinent here is that the decision there, by six out of seven of the California Supreme Court justices, that the "hot cargo" Act was unconstitutional and could not serve as a basis for imprisoning a man for [40] contempt of court for picketing a product, rests

on the decision of the Supreme Court of the United States and only secondarily on the decisions of the Supreme Court of California.

In order that I may make my opening a real opening so far as the constitutional phase is concerned, which your Honor very properly required should be done, I am going to state that the Supreme Court of the United States has set out a definite pattern of what picketing is lawful and what picketing is unlawful, and that the picketing of a product such as is found here is definitely within the lawful area. I will show you the decisions, or, I will cite the decisions as far as I have time within the half hour, and I will invite counsel's comments upon them.

The Court: Pardon me' Mr. Todd. If you want to recess now until this afternoon, I think this would be a good time. It is just about 12:00 o'clock.

Mr. Todd: Very well. Thank you, your Honor.

The Court: 2:00 o'clock, gentlemen.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m. of the same day.) [41]

Los Angeles, California, Tuesday, December 30, 1947.

2 P. M.

The Court: You may proceed.

Mr. Todd: May it please the court: I am going to try to cover quite a little territory in a little time, so if I move rapidly from one point to another that will be the reason. I would like to remind your Honor at this time that practically every case I am going to cite is a decision annulling some statute for contravening the provisions of the First Amendment. Almost every deci-

sion will be such a case, so that there is nothing new about the situation we have here.

The Taft-Hartley bill is the subject of a very heated discussion in the newspapers and elsewhere, but in this court it is just a law, and another statute that has to be measured up by the Bill of Rights. The charge made against our clients here is picketing, and we must understand what picketing is. Picketing is variously referred to as merely carrying a banner up and down, and the exercise of free speech without having any particular effect upon anybody, but let us see what the Supreme Court of the United States means when it speaks of picketing.

We turn to the Thornhill case, which was the first case in which picketing was upheld in a decision discussing the matter elaborately. Of course, in the same case picketing [42] was referred to as a constitutional right in the year 1937, but it wasn't until April, 1940, when the Thornhill and Carlson cases came down, that the Supreme Court actually argued out the question. I want to refer to the Thornhill case for two reasons; first, for the purpose of showing just what the court means when it speaks of picketing as a means of publicizing a labor dispute. But, first, I would like to speak of what we mean when we say that the rights secured by the First Amendment are cognate rights, and that the rights secured to us by the Constitution are freedom of speech, freedom of worship, freedom of assembly, and freedom of the press. And freedom of picketing is referred to there with freedom of speech. When the Supreme Court decided that that is the exercise of free speech, it had no previous line of decisions to cite, but here are the cases which it cites to support the proposition that free-

dom of speech is protected by the First Amendment, referring, of course, to the facts before the court, which were peaceful picketing. They cited the Schneider case. That is all found at page 95, 310 U. S. The Schneider case was a case holding it was a constitutional right to distribute handbills. DeJonge v. Oregon was a case which upheld the freedom of assembly. Grosjean v. American Press Co. involved freedom of the press, and Near v. Minnesota held that a State statute of Minnesota which sought an injunction against the [43] publication of a libel was unconstitutional. Stromberg v. California, which we cite, was the red flag case, holding that anyone had a constitutional right to raise the red flag if they wanted to. And Gitlow v. New York is the case which was the criminal anarchy case, in which the conviction of Gitlow was upheld, but Justice Brandeis and Justice Holmes dissented.

Now, that will illustrate what I mean by saying that these rights are cognate rights, as stated in Thomas v. Collins. In the Meadowmoor case the Supreme Court said they are all facets of the same right, so that all the rights stand or fall together; the right of free speech, freedom of assembly, freedom of worship and freedom of the press all stand or fall together.

I want to refer to the Thornhill case to show what the Supreme Court meant when it says that the petitioner has the right to picket. Here is the statute of the State of Alabama:

> "Loitering or picketing forbidden.—Any person or persons, who, without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of any other person, firm, corporation, or association of people, engaged in a

lawful business, for the purpose, or with the intent of influencing, or inducing other [44] persons not to trade with, buy from, sell to, have business dealings with, or be employed by such persons, firm, corporation, or association, or who picket the works or place of business of such other persons, firms, corporations, or associations of persons, for the purpose of hindering, delaying, or interfering with or injuring any lawful business or enterprise of another, shall be guilty of a misdemeanor, but nothing herein shall prevent any person from soliciting trade or business for a competitive business."

All right. Now, that describes picket for the purpose of boycotting,—picketing pursuant to a boycott.

When the Supreme Court in the course of the opinion several times refers to picketing as being the exercise of the right of free speech, it refers to it as publicizing of a labor dispute. That is what they mean; for the purpose of keeping people from trading with that place where they have a labor dispute. That was the opinion of the Supreme Court of the United States handed down in April of 1940 unanimously,—a unanimous decision that has always been upheld. So we know now when the Supreme Court of the United States speaks of picketing they speak of it for the purpose of establishing a boycott.

I want to refer again to the case of Thomas v. Collins [45] on this point. Counsel may tell you that this statute must be presumed to be constitutional. This statute stands here naked, without any presumption of constitutionality because of the high favor granted to free speech, and I

will read you the language of the Supreme Court of the United States in Thomas v. Collins, 323 U.S., reading from pages 529 to 530:

> "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment."

So there is no question of the constitutionality in favor of this right secured by the First Amendment. On that same point see the case, which is possibly not in our memorandum, but I would like to cite it: Ex parte Mitsuye Endo, 323 U.S. 283, at 289.

It is hardly necessary to cite to your Honor other authorities holding that these personal rights preserved by the First Amendment are highly favored by the courts, as indicated by Thomas v. Collins, and they are favored over [46] property rights. Property rights are not in the same class with personal rights, so far as the favor of the courts is concerned, and that is illustrated by two cases which are in our points and authorities, Marsh v. Alabama and Tucker v. Texas, two cases which involve somewhat the same facts. They involved the right of free speech in trespass. In each case there was a statute of the State prohibiting anybody from trespassing after being ordered to leave. I believe it was a Jehovah's Witness case, in which the person persisted in exercising the right of free speech. She chose not to get away the

ten feet necessary to get off the property, she was convicted, and the conviction was reversed in each case by the Supreme Court of the United States.

Now, I said I would define the meaning of lawful picketing, and in doing so I must watch my time. In the first place, picketing is defined by the Supreme Court of California, and in much the same language and intent by the Supreme Court of the United States as being picketing with regard to a dispute having some reasonable relevance to labor conditions. That was the Thornhill case, Carlson v. California, Swing v. A. F. of L., Cafeteria Employees Union v. Angelos, and in California the McKay and Smith Market cases. One decision which is cited against me in almost every one of these cases is, namely, Dorchy v. Kansas, an old case, 272 U.S. 306, at 311, where a union was picketing to collect a stale claim [47] belonging to one of its members, and the Supreme Court of the United States, through Mr. Justice Brandeis, very properly held it was not a proper subject of picketing, that it had no relevancy to a labor dispute. So that fixes the fence or bar or boundary on that side, that picketing must have relevance to a labor dispute.

Then, picketing must be peaceful. The Meadowmoor case has been cited, where it was held where there was violence and a threat of violence continued the picketing must be stopped while the imminence of the threat of violence continued, but only so far; that the picketing could go on whenever it became peaceful.

The pattern will be shown by four decisions in one volume of the Reports of the Supreme Court of the United States, in Volume 315. There we have the Hotel & Restaurant Employees Local v. Employment Relations Board, 315 U.S. 437. That possibly may not be in our

points and authorities. That was a case where the Supreme Court—just let me check my citation on that to be sure that I have it exactly right. There were four cases involving the right of limiting the picketing.

The Court: Is that the Ritter's Cafe case?

Mr. Todd: That is one of the four cases.

The Court: I see.

Mr. Todd: I am right on the Hotel & Restaurant Employees [48] case. That is 315 U.S. at 437, and there it was held that where an injunction or where a restrictive action by the Employment Relations Board forbid only violence, it would not be disturbed by the Supreme Court. There was a very hot fight over the case, and a petition for rehearing was granted; the Supreme Court of the State of Wisconsin explaining that all they were preventing was violence. That illustrates that violence may be prevented by a State, because the State always had the right to keep the peace.

Now, another case there was the Allen-Bradley case. That also came from Wisconsin, the Allen-Bradley case, 315 U.S. 740. That was where the Supreme Court upheld the injunction so far as it prevented violence or physical obstruction of entry and egress or mass picketing, or picketing at the homes of employees. Picketing of those various types was prohibited because the State has the right to keep the peace in connection with picketing or in connection with anything else. That is two of the cases. The other two are the Wohl case, 315 U.S. 769. That is a case that comes very close to the facts in the case at bar. That was a case in New York where the Bakery Drivers were having a controversy with the wholesale bakers and picketed the bread in the hands of customers of their for-

mer employers. That, again, was a unanimous decision of the Supreme Court of the United States upholding that picketing is a constitutional [49] right, although apparently prohibited, or the courts of New York thought it was prohibited by the State of New York as not being a true labor dispute. Yet the Supreme Court of the United States upheld that right of picketing a product, which is just exactly what we have before us in this case.

The fourth case is the Ritter's Cafe case, which I have cited against me in every case of this character that I have had in recent years since the case was decided, and there is one paragraph which they always leave out, and I am going to read that paragraph to your Honor so that you will have it.

That was a case where a man who owned a cafe down in Houston, or one of the Texas cities, which was fully unionized, was putting up a building a mile and a half away which, so far as the record showed, had no connection whatever with the cafe. His contractor had some trouble with the Carpenters & Joiners Union, and the Carpenters & Joiners first picketed the contractor. The case got to the Supreme Court eventually and they said they had a perfect right to picket the contractor and picket the contractor's business, but they could not picket the cafe because it had no nexus, it had no economic interdependence with the construction job which was the subject of the dispute. Now, I want to just read you the paragraph which the other side never cites, at [50] page 737. No, it isn't 737. It must be 727. Yes, 727:

> "Texas has undertaken to localize industrial conflict by prohibiting the exertion of concerted pressure directed at the business, wholly outside the economic context of the real dispute,"—by definition

that would not have included that among the definitions of picketing—"of a person whose relation to the dispute arises from his business dealings with one of the disputants. The State has not attempted to outlaw whatever psychological pressure may be involved in the mere communication by an individual of the facts relating to his differences with another. Nor are we confronted here with a limitation upon speech in circumstances where there exists an 'interdependence of economic interest of all engaged in the same industry,'" citing the famous Swing case, and others.

Then it goes on:

"Compare Journeymen Tailors Union Local No. 195 v. Miller's," and so on, and then it goes on further:

"The line drawn by Texas in this case,"—that is holding that there must be a common interdependence—"is not the line drawn by New York in the Wohl case. The dispute there related to the conditions under which bakery products were sold [51] and delivered to retailers. The business of the retailers was therefore directly involved in the dispute."

Just as you have here, the product is directly involved in the dispute.

"In picketing the retail establishments, the union members would only be following the subject-matter of their dispute."

And the Wohl case, as I say, was decided unanimously, upholding the right to picket the product.

I want to read just a short paragraph from a leading case with regard to the picketing of a product in the

State of California, and I am referring to the case of Fortenbury v. Superior Court, 16 Cal. (2d) 405, and, as I say, I want to read just a paragraph from page 408. This was one of the McKay cases in which picketing was upheld as a constitutional right:

> "Although the respondent argues that a person secondarily boycotted is an innocent third party caught between the upper and lower millstones of an industrial dispute in which he has no interest, this is clearly not correct."—This is the language of Mr. Justice Edmonds, speaking for the Court—"One who sells a product of a merchant or manufacturer engaged in a labor dispute with his [52] employees, inescapably becomes an ally of the employer. He has a direct unity of interest with the one against whom labor's complaint is directed. By providing an outlet for that product, he enables the employer to maintain the working conditions against which labor is protesting."—Which Mr. Gilbert told you about this morning from the affidavit—"And unless the union is allowed to follow the product to the place where it is sold and to ask the public by peaceful representations to refrain from purchasing it, the workers have no real opportunity to tell their story to those whose interest or lack of interest will, in large measure, determine the issues in dispute." Citing the New York case of Goldfinger v. Feintuch, which I believe was one of Mr. Justice Cardozo's decisions.

Now, to get back here a moment, the Supreme Court in fixing this area within which picketing will be upheld, and this area is referred to in the Blaney case, in general said that picketing cannot be limited to a dispute between an employer and his own employees. That really

brings up the whole issue of secondary action. If picketing of a labor dispute could be limited to an employer and his own employees, then, of course, the worker would be very much hampered in collective action. So our Supreme Court in Swing v. A. F. of L. [53] which is cited in our memorandum held that workers in the same industry, though not working for the same employer, were interested in the conditions at his place. That was a case where there was picketing by the beauticians of beauty parlors not unionized. That is reported in 312 U.S. It is right along as a companion case to the Meadowmoor case, in 312 U.S. I can give you the citation, although I am sure it is in our points and authorities. It is 312 U.S. 321. That was decided and that is reported in 312 U.S. In 315 U.S. we have the Ritter's Cafe case.

Now I want to cite another case decided after the Ritter's Cafe case, and making exactly the same holding as in the Swing case. I am referring to the Angelos case, Cafeteria Employees Union v. Angelos, reported in 320, I believe it is, 320 U.S. I am sure it is. Yes, here we are. Cafeteria Employees Union v. Angelos, 320 U.S. 293. That was where a cafeteria was apparently, according to one contention, being run by its owners, they had no employees, and they were picketed by the Culinary Workers, and the point was raised, or, in the first place, they claimed the pickets should not have said things about them, that they were Fascists, and so forth, and Justice Frankfurter said that was a part of the key and character of industrial disputes. But one of the points raised was that these people were outsiders, they were not employees, and it was argued they had [54] no right to demonstrate or picket this particular

place. So the Supreme Court upholds the right to picket and uses the same language previously used in the Swing case. The court said, and this is quoting from the decision at the end of page 295 and page 296:

> ". . . The court here, as in the Swing case, was probably led into error by assuming that if a controversy does not come within the scope of State legislation limiting the issue of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined. But, as we have heretofore decided, a State cannot exclude working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' "

That quotation is from the Swing case.

The court does not permit such a restriction of the circle of economic competition, and, as I say, that raises the whole question of secondary action, which is involved in the case we have before us.

Now, the cases I have cited hold that where picketing fulfills these various conditions, that is, where picketing is in a dispute reasonably relevant to labor conditions, where [55] it is peaceful, where it is not limited to the economic nexus, or, rather, where it is where it does come within the economic nexus, within the economic interdependence, it may be freely carried on.

That is so held in the Ritter's Cafe case, the Wohl case, the Park & Tilford case, which is a California case cited in our points and authorities, and in the Blaney case.

Incidentally, I might refer to this case. I have many other authorities here which I could cite, but I don't think it is necessary in this opening argument. Your Honor is familiar with the fine set of works called the Restatements of the Law. The Restatement of Torts came out, I believe, in 1939. That was before the constitutional decisions upholding the constitutional right of picketing, so those volumes must have been worked up way along in the '30s, long before there was any recognition of the constitutional right of picketing. The authors of the work found great difficulty in defining "boycott," as many other people have found. So they did not use the word "boycott." They described the acts, and they upheld the secondary boycott. That isn't binding upon this court in this particular case because we say you have no jurisdiction because this statute contravenes constitutional rights. But it is certainly interesting to note that a group of representative lawyers working up a restatement of the law should recognize a secondary [56] boycott as one of the normal incidents of an industrial dispute and should have upheld the secondary boycott if carried on without violence and without fraud and the other norms.

I should like to save the rest of my time for rebuttal, and I thank your Honor for your attention.

Mr. Manoli: I would like to take a moment, if the court please, at the outset to discuss the nature of these proceedings. These proceedings are brought on behalf of the Board's Regional Director in the Los Angeles office by virtue of Section 10(1) of the Act. Section 10(1) of the Act provides that whenever it is charged that a violation of Section 8(b)(4)(A) has been committed, or other subsections of Section 8(b)(4), and

the regional director finds there is reasonable cause to believe that the charges are true and that a complaint by the Board should issue, then the regional officer or the person to whom the investigation has been assigned shall make application to a District Court for appropriate injunctive relief, pending the adjuciation of the matter by the Board.

Under the Board's rules, whenever we apply for or file a petition of this kind, we are required, or, the regional office is required to issue a complaint against the respondents. The complaint starts the proceedings before the Board, the matter then is taken up before the Board's trial [57] examiner, who hears the evidence, the testimony in the case, and then he, in turn, files an intermediate report. The intermediate report goes to the Board and the Board then decides the case for itself. Upon the Board's order either denying relief to the charging party, or finding that there is an unfair labor practice committed by the respondents, whatever party is aggrieved may then appeal to the Circuit Court of Appeals, whichever one is appropriate, and there test the Board's order as to whether or not it is proper and lawful, and upon the decision of the Circuit Court of Appeals there may be an appeal to the Supreme Court.

What I am trying to bring out is the narrow issue which is before the court, as we conceive it, apart from the constitutional questions involved in this case. The issue, as we see it, before this court is not so much to determine the merits of the case. The merits of the case under the statutory scheme would be decided by the board initially, and by the Circuit Court of Appeals, and possibly by the Supreme Court.

Before this court we are here in what we may call an interlocutory injunction proceeding; in other words, to compel the respondents to quit doing what they are doing, which we think is an unfair labor practice, until such time as the Board has a chance to pass upon this case and determine whether or not the respondents are, in fact, committing [58] an unfair labor practice in violation of this statute. Whenever the Board issues its decision, if we obtain an injunction from the court, that injunction then expires, and then we may go to the Circuit Court of Appeals for whatever relief is needed, pending decision by the Supreme Court.

So the issue before this court is whether or not upon the investigations made by the Regional Director there is reasonable cause for him to believe, probable cause, or, reasonable cause is the way the statute is framed, that a violation of the Act has been committed as charged, and that a complaint should issue. Our position is that if this court agrees there is reasonable cause to believe that such a violation has been committed, then we are entitled to injunctive relief; that it is not for this court to determine the disputed questions of fact or even disputed questions of law, except in a very narrow sense, and that is whether or not the Regional Director has reasonable cause to believe, as I say, that a violation has been committed.

I want to call attention to that because since these proceedings are rather new, not only to us, but I am quite sure to the District Courts as well; we didn't have this sort of thing under the old National Labor Relations Act. It is something entirely new, set up by the so-called Taft-Hartley Act. [59]

The Court: Do you argue that this Act brings into play new principles of equity?

Mr. Manoli: No, your Honor, I do not say that, but I say that under the statute we are required, whenever the Regional Director has reasonable cause to believe that a violation has been committed, to come into a court of equity; that it is mandatory upon us to come in and ask for injunctive relief, and for that injunctive relief, we do not have to show, as we see it, irreparable harm, as is usually the case—as is the case in an equity proceeding. We are enjoined to show that only when we are asking for a temporary restraining order, and the language of the statute says—this is Section 10(1), your Honor:

> "Whenever it is charged that any person has engaged in an unfair labor practice with the meaning of paragraph (4)(A), (B) or (C) of Section 8(b) the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any District Court [60] of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business,

for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter."

Then the statute goes on to say:

"Provided Further, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period."

We are not asking for a temporary restraining order. We are asking for what I have described as an interlocutory injunction, which will be good, if issued, until the Board decides the case, and we submit that since the statute makes no provision in an injunction proceeding of this kind for a showing of irreparable harm, that we do not have to show it. The statute says we have to make that showing only when we ask for a temporary restraining order. It makes no reference to a matter such as this, to an injunction such as [61] this.

The Court: What is the purpose of the interlocutory injunction?

Mr. Manoli: I think the purpose of it, your Honor, is to sort of undo, have certain things undone, until there is a legal determination by the Board,—until there is a determination with respect to the legal issues by the Board and ultimately by the Circuit Court of Appeals. It does involve a certain amount of duplication, I grant you, your Honor; that cases will be frequently heard before District Courts and at the same time before the Board, but that is the scheme of the statute.

The Court: That argument is tantamount to saying, is it not, that the act of an administrative officer ex proprio vigore, without any substantial basis, would be sufficient to put into operation a court of equity to issue an injunction?

Mr. Manoli: Not exactly that, your Honor. We would have to make a showing by testimony that the Regional Director does have reasonable cause to believe that a violation has been committed. I think it will come out in this particular case that there is very little dispute as to the facts, and the chances are that we will not have to put on any testimony. But let us assume that in the case there was an answer filed to the Board's petition denying the facts [62] or the allegations in the Board's petition. Then we would be compelled to bring in witnesses here showing the basis of the Regional Director's determination that he has reasonable cause to believe that a violation has been committed. I don't think that is quite as narrow an action as your Honor indicated in your question.

The court still does have the question of determining whether or not the regional director does have reasonable cause to believe that a violation has been committed. The Regional Director cannot simply come in and say, "I think a violation has been committed, and I want the court to issue an injunction." It is not quite that simple. We do have to show that upon the facts the Regional Director can properly entertain reasonable cause that a violation has been committed.

Now, as to the facts in this case I think I can say that there is little disagreement between the petitioner, on the one hand, and the respondents, on the other. The facts, briefly, are something like this: The union in this

case has a dispute with this Sealright Company, the charging party here, over terms of conditions of employment. The union has gone out on strike. So far as I know, the strike is perfectly lawful. Then the union has gone to the Express Company which handles the goods of Sealright, and it has also gone over to the Terminal which likewise handles certain [63] products of Sealright, and has established a picket line at these places so as to induce or persuade the employees of these two particular outfits that do business with Sealright not to handle the goods of Sealright. We do not assert that there has been any violence on the picket line, or that any threats have been made, any express threats have been made. The picketing I think can be termed peaceful picketing in the sense that there has been no violence on the picket line, no disturbance of any kind. Nevertheless, we feel that this sort of picketing is a violation of Section 8(b)(4)(A) of the Act. Congress in enacting Section 8(b)(4)(A) of the Act had, as legislative history of the Act shows, this in mind: it sought to localize industrial dispute between the employer immediately concerned and his employees and the labor organization which represented them. Congress was very much concerned over the fact that frequently unions who were involved in a dispute with employer A would seek to bring pressure to bear upon the employees of employer B, who did business with employer A, so as to, in turn, put pressure on employer B not to do business with employer A. Congress felt that sort of thing, and I think it has been frequently described as secondary boycott,—felt that sort of thing was inimical to the general welfare of the country, and it sought to put certain limitations upon it. One of the common ways

in which this sort of pressure is brought upon [64] the employees of an employer with whom the union has no dispute is, of course, the picket line.

There has been a great deal said about free speech, whether it is free speech, and as to what its character is. There are a great number of decisions by the Supreme Court, and I am not attempting to minimize the force of the decisions. They are hard to explain away, but I think the Ritter's Cafe case, decided in 1942, furnishes us with a basis for the argument that Congress may limit industrial conflict so that the conflict takes place only between the employer immediately concerned and his employees, and so as to prevent the unions from bringing pressure to bear upon the employees of another employer so that they will engage in a concerted refusal to handle the goods of the employer with whom the union is having the real dispute, and, therefore, force the second employer to cease doing business with that particular employer. The Ritter decision is not, of course, on the motion, but I think the maxim of the case furnishes us with a basis which justifies the upholding of the constitutionality of this section of the Act. In that case Ritter owned a restaurant, and he had contracted with one Plaster—it is very easy for me to remember his name—he had contracted with one Plaster to build another building for him. Plaster was having trouble with the Carpenters union because he would not employ union people on the [65] construction site. The union then began to picket Ritter's restaurant. The union had no trouble with Ritter over his restaurant, and Ritter's employees had no difficulty with their employer. The State of Texas brought proceedings against the union in that case—or, before I get to that, the union

then began, as I say, to picket Ritter's Restaurant, and proceedings were brought against the union under the Texas Antitrust Law, alleging that this sort of picketing, which was perfectly peaceful and no threats were being made, was contrary to the Texas Antitrust Law. In that case Mr. Justice Frankfurter in the opinion for the majority of the court said:

> "It is true that by peaceful picketing workingmen communicate their grievances. As a means of communicating the facts of a labor dispute, peaceful picketing may be a phase of the constitutional right of free utterance. But recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication. To deny to the states the power to draw this [66] line is to write into the Constitution the notion that every instance of peaceful picketing—anywhere and under any circumstances—is necessarily a phase of the controversy which provoked the picketing. Such a view of the Due Process Clause would compel the state to allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose.
>
> "In forbidding such conscription of neutrals, in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states. We hold that the Constitution

does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into doctrinaire dogma. We must be mindful that 'the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.'" [67]

In this case we say that Congress in the exercise of its plenary power over commerce, which is like a State in the exercise of its police case, as in the Ritter case that Congress, in the exercise of their power, may draw this line and say that a labor organization or its agents shall not induce or encourage the employees of another employer to engage in a concerted refusal to handle goods where the purpose is to cause that employer to cease doing business with the employer with whom the union is having difficulties.

That, in substance, your Honor, is the position we take in this case. Congress has given a great deal of thought to this problem, has given a great deal of thought to the matter of the secondary boycott upon the general welfare of the nation, and has come to draw this line, and we think, under the principle enunciated in the Ritter case, Congress can properly draw that line.

Now, I would like to also quote, in connection with the Ritter case, from the case of Stapleton v. Mitchell,

as to which counsel for the union has already argued. That is in 60 Fed. Supp., page 51. I think the language in that case is helpful to a decision in this case. In that case Judge Murrah of the Tenth Circuit, speaking for a three-judge court said:

> "As we have said, the process of self-organization, collective bargaining and all other [68] allied union activities necessarily involve the rights of free speech, press and assembly which may not be conditioned by statute or previous restraint by injunctive process, but we must also recognize that the sum total of all union activities are directed toward economic objectives and necessarily involve purely commercial activities which may be regulated in the public interest on any reasonable basis. In short, when used as an economic weapon in the field of industrial relations or as coercive technique, speech, press and assembly are subject to reasonable regulation in the public interest and in that respect the State is the primary judge of the need, and it is not required to wait until the danger to the community which it seeks to avoid is 'clear and present.' "

There is one other point I want to cover before I am through here, and that is Section 8(c) of the Act. Section 8(c) of the Act provides that:

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, [69] if such expression contains no threat of reprisal or force or promise of benefit."

That section of the Act must be read—or, perhaps the other way around. Section 8(b)(4)(A) reads:

> "(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * * * * *
>
> "(4) To engage in or to induce or encourage the employees of any employer to engage in, a strike,"

and so on, and that must be read in conjunction with Section 8(c), because Section 8(c) says,

> "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act . . ."

We say, your Honor, that the picketing as being conducted in this case is more than an expression of views, or argument, or opinion. It is a coercive technique, and the Supreme Court has recognized that, I think, in the Ritter case, and it is also recognized in the quotation I just read from Stapleton v. Mitchell, and that is, where you have a coercive technique, it is not within the protections of Section 8(c) so as not to be an unfair labor practice because it is the expressing of views, argument, or opinion, or the dissemination [70] thereof. This picketing is something more than that, and for that reason we believe it comes within the prohibition of Section 8(b)(4)(A).

Counsel for the other side, in addition to their arguments on the basis of the First Amendment, have also sought to sustain their position on the basis of the Thir-

teenth Amendment, which prohibits involuntary servitude. I do not believe that that amendment is in this case at all, your Honor.

Section 8(b)(4) of the Act provides that it shall be an unfair labor practice for a labor organization or its agents to engage in various conduct. There is nothing in this act which makes it an unfair labor practice for an individual employee to quit. What is the unfair labor practice is something which is done by the labor organization or its agents. We are not asking in this case here for an order which compels the employees here to handle the goods of Sealright. That is their privilege. If they do not want to do so, they have a perfect right to follow that course. What we are asking for is an order to restrain the labor organization or its agents from inducing or persuading them to engage in a concerted refusal of this kind that has taken place in this case.

The Court: How would you frame that kind of an injunction? What would you say in the edict? [71]

Mr. Manoli: Well, your Honor, I must be frank and say that I haven't given a great deal of thought to the framing of the injunction as yet.

The Court: You have all the facts here. You say there is no dispute on the facts. What kind of an injunctive order would you hold should be made?

Mr. Manoli: I think you might perhaps enjoin them from engaging in this concerted picketing by threats of reprisal or by promises of benefits, and other like acts.

The Court: Those are simply the words of the statute.

Mr. Manoli: Yes, they are, your Honor.

The Court: You think those words are self-interpretive?

Mr. Manoli: I think that if we made it as specific as that we could not have too much trouble with understanding what is meant.

The Court: If that argument goes to its logical conclusion, doesn't it prohibit picketing?

Mr. Manoli: Does it prohibit picketing?

The Court: Yes.

Mr. Manoli: We think it does, your Honor, because we think by means of this picketing the union here is applying a coercive technique to persuade these employees in the Express Company and the Terminal to engage in a concerted refusal in the course of business to handle the products of Sealright, so that their employer, in turn, would he required [72] to cease doing business with Sealright.

Your Honor, I am sorry I wasn't aware of the rules of this court requiring the submitting of a memorandum in support of our postion. I would like to have a few days so that I could do that. Would your Honor desire to set any time limit, or would by the end of this week be all right?

The Court: Yes, I think so.

Mr. Manoli: Thank you, your Honor.

Mr. Todd: Your Honor, please, counsel cites the Stapleton v. Mitchell case, and he cites the general language of the court to the effect that Congress, as a legislative body, has the right to limit or to regulate picketing. I can give him where the general language I refer to is used. What we are concerned with is whether or

not the Supreme Court has laid down the general rule. It says, "Yes, you have the general right, but here is what you cannot do, and here is what the legislative body can do." Then in Stapleton v. Mitchell, and this is Justice Murrah's statement we are concerned with, in 60 Fed Supp., page 56, column 1, and here is paragraph (3) of the statute that is before the court, which makes it unlawful for any person:

> "(3) To participate in any strike, walk-out or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees . . . ." [73]

That is not what we are concerned with here, but that is one of the sections that is set out. Yes, now here is Section 12, where it is unlawful:

> "(12) To refuse to handle, install, use, or work on particular materials or equipment and supplies because not produced, processed, or delivered by members of a labor organization; (13) to cause any cessation of work or interfer with the progress of work by reason of any jurisdictional dispute, grievance or disagreement between or within labor organizations; . . ."

"Jurisdictional,"—it is very similar to the situation we have here. And if you turn over then to page 62, it says:

> "We conclude that subsections (3), (12) and (13) of Section 8 of the Act are unconstitutional and void on their face, and the defendants are enjoined from enforcing or giving effect thereto."

So we have the language of the Circuit Court telling legislative bodies exactly what they can and what they cannot do.

Counsel was very frank in saying that the purpose of this Act is to limit industrial disputes to an employer and his own employees. Now, let us see what the Supreme Court said. I cited this before, but it is worth reading again. Let us [74] see what the Supreme Court said in the Angelos case. That is, Cafeteria Employees Union v. Angelos, 320 U.S. 293, decided November 22, 1943, which was a year and a half after the Ritter's Cafe case. That was a case which involved the contention that the State of New York had a right to limit the area of an industrial dispute to an employer and his own employees, almost exactly what counsel said, almost his exact language. Now, let us see what the Supreme Court said at page 295 and 296:

> ". . . The Court here, as in the Swing case, was probably led into error by assuming that if a controversy does not come within the scope of State legislation limiting the issue of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined. But, as we have heretofore decided, a State cannot exclude workingmen in a particular industry from putting their case to the public in a peaceful way"—that is what our people are doing; they are putting their case to the public in a peaceful way—" 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' "

The Supreme Court says you cannot do it, the legislative [75] body cannot do it, and that is quoting from the language of the Swing case, 312 U.S. at 326. So we have the court in two cases within a period of two or three years using exactly the same language and saying that a legislative body cannot limit the area of industrial disputes to a circle including only one employer and his own employees.

I do not know whether it is necessary to go very deeply into counsel's argument. He says that "we do not claim violence or threats." In other words, I suppose he would say that he doesn't claim any promise of benefits either, so that the language of the immunizing statute does not apply here. He admits there wasn't any violence and threats, and probably admits there wasn't any promise of benefits. Therefore, what they are seeking to enjoin is picketing, which was upheld by the Supreme Court, certainly since April, 1940. And he says the picketing has coercive force. Of course it has. That is what picketing is. It is publicizing a dispute for the purpose of helping the union and helping to keep away business from the particular employer, and also to picket his product wherever it goes, because both in the Wohl case, the decision of the Supreme Court, and in the Fortenbury case, the decision of the Supreme Court of California, in which they cited the Supreme Court of New York, Goldfinger v. Feintuch, they hold that the only opportunity that the union has to publicize the dispute is by going where the product is [76] transported or is on sale.

Then, as I pointed out, they are trying to fly exactly in the face of the decisions of the Supreme Court with regard to limiting the area of an industrial dispute. There

is the Wohl case, as I pointed out to you, which was a unanimous decision. Let me look at the Angelos case and see whether that is also a unanimous decision. The Wohl case was. There is no dissenting opinion, apparently, in the Cafeteria Employees v. Angelos case, and they say in both cases that you cannot limit the dispute to an employer and his own employees.

Counsel says that the conditions which brought on the "hot cargo" Act,—for that matter, more or less says you must not have that. Now, I didn't go into a secondary boycott, except as here, boycotting a product which we contend is proper and a true secondary boycott. That is all.

Would your Honor allow us to reply to counsel's memorandum in writing?

The Court: Yes.

Mr. Todd: We thank you for your attention, and we would be glad to file the argument in a little more substantial way.

The Court: You may file your memorandum by Saturday of this week, Mr. Manoli, and then the other side will have—how many days do you want? Three or four days?

Mr. Todd: I imagine it will be rather a formidable [77] document. Could we have a week?

The Court: Any objection?

Mr. Manoli: No objection.

The Court: Very well.

Mr. Todd: Thank you.

The Court: Gentlemen, the court posed to counsel, and I don't know whether it was done in the presence of all of you or not, but the question was as to whether

this might not be a three-judge case, in view of the manner in which the argument has developed? Have you given that any thought at all?

Mr. Gilbert: Yes, we have, your Honor. All of the cases which we can find in which that particular section of the Judicial Code—I believe it is Section 266 to which I have reference—has been invoked have been cases in which a private party has sought injunctive relief against the enforcement of either a Federal or a State law.

In Hague v. C.I.O., which is one case, that was action brought under the Civil Rights Act by a labor organization to enjoin the enforcement of a municipal ordinance. In Stapleton v. Mitchell, to which we have referred here, that was a case of seeking an injunction against the Kansas statute. There is a recent case, the title of which escapes me, but which is a decision, I believe, which counsel for the Board can perhaps enlighten us on, in which the validity of [78] Section 10(h) has been brought into play, the question of so-called loyalty affidavits, and there was an action to enjoin the Board from proceeding. I know of no case in which it holds that the enforcement of a purported statutory proceeding or statutory right by the governmental agency itself requires the three-judge court under that particular section.

Mr. Manoli: I didn't know that your Honor posed that question, but my understanding of the law is as Mr. Gilbert has stated it.

The Court: What was that case under Section 10(h)?

Mr. Manoli: I expect you are referring to the case in Texas?

Mr. Gilbert: That is right.

Mr. Manoli: That was a case with only one judge.

The Court: What was that case?

Mr. Manoli: That is the Oil Workers Union against—

The Court: You can cite it in your memorandum, if you will.

Mr. Manoli: Yes.

Mr. Todd: I was going to suggest that we might cover it in that memorandum. I am sure we all want to have it before the court that has the proper jurisdiction.

The Court: Very well.

[Endorsed]: Filed Apr. 7, 1948. Edmund L. Smith, Clerk. [79]

* * * * * * * * *

Los Angeles, California, Friday, February 13, 1948,

2:00 P. M.

The Clerk: No. 7859 Civil, Howard F. Lebaron, etc. vs. Printing Specialties and Paper Converters Union. Hearing settlement and entry of Findings of Fact and Conclusions of Law. George H. O'Brien for the Petitioner. Gilbert and Sapiro for the Respondents.

The Court: May I have the file? Gentlemen, I thought it well, in view of the objections filed by the Respondents, to advise all of you that this is the time fixed for the settlement of the Findings of Fact and Conclusions of Law, and Injunctive Relief, pursuant to order entered February 11, 1948. If there is anything further to add to what you have stated in your objections, I shall be glad to hear it.

Mr. Gilbert: On behalf of the Respondents, your Honor, I believe that we have nothing further to add. I would like to make one brief statement.

We have submitted to your Honor proposed Findings of Facts and particularly with reference to those proposed findings relating to the economic background of this dispute, from which the situation flowed. That is before this Court. It is our very conscientious desire to have the Court, if it will, and if it desires, make findings in respect to those matters, in order to have complete findings for the purpose of any appeal which might be taken upon constitutional [2] grounds.

With respect to the order for injunctive relief itself, as stated in the memorandum, I simply would like to reaffirm here orally today our conscientious desire to advise our clients, once the order is made, in such a fashion that they will be able to scrupulously observe the order of this Court; and it is for that reason we have urged upon the Court that the order should have such particularity that we will be able to accomplish that result.

Without in any way reflecting upon the merits of the situation, we frankly and most sincerely state to the Court that we find ourselves incapable of advising our clients as to the exact scope of an order couched in the language of the Act itself, because there is some confusion in our minds as to whether the dictionary definition of the language of this particular section of the Act is intended to apply, or whether there are any constructions or representations in that language. As I say, it is not raised in any way to reflect upon the merits, but we want to be in a position to advise our clients so they will scrupulously obey the order of this Court, and not

find themselves not hewing strictly to the line, according to the scope of this Court's injunctive relief.

Mr. O'Brien: With reference to the first point raised by Mr. Gilbert, on the economic background, I think that can [3] probably be covered by language substantially as follows, in the Findings of Fact:

> "That on or about November 3, 1947, Local 388, having failed to reach an agreement with Sealright, caused a strike against Sealright."

On the second matter raised by Mr. Gilbert, as to the particularity of the order, I endeavored to follow the Court's instructions, or decision, by following strictly the language of the Act. I do suggest that to the following language, on line 16, page 5, of the proposed order, which reads:

> "Engaging in, or inducing or encouraging, the employees of the employer"

that there be added the following words:

> "by picketing, orders, force, threats, or promises of benefit, or by permitting any such to remain in force, or by any like or related acts or conduct"

then the text of the proposed order would resume as stated on line 17:

> "to engage in, a strike or a concerted refusal in the course of their employment to use,"

I have had the final page of the proposed order retyped, and would like to submit it to counsel and to the Court.

The Court: You may do so. As to the first suggestion [4] that you made, where would you propose that that be incorporated into the findings?

Mr. O'Brien: If the Court please, that could be incorporated, and I think the proper place for it would be at the end of Findings Sixth, as a new Section 7, and Section Seventh and Section Eighth should thereafter be renumbered.

The Court: Will you read the first proposal, Mr. Dewing?

(Record read by the reporter.)

The Court: What is your reaction to that, Mr. Gilbert?

Mr. Gilbert: May it please the Court, particularly in view of the decisions of the Supreme Court of the United States with respect to picketing matters, I think it is clear that in almost every one of these cases the court has had before it, and properly should have before it, the factual situation giving rise to picketing activities.

We have submitted in our proposed findings of fact certain uncontroverted factual material drawn from the affidavit of Mr. Turner, which does give the background in this situation and the exact issues in dispute between the employer and his employees; the fact that the Union was a statutory bargaining representative of the employees; and the number of employees who joined in the strike; the relationship between the wages paid and the wages offered by this employer, and the prevailing standards established in the industry, and so on. [5]

I recognize that this Court may feel that such factual economic background would not in any respect alter its view of the validity of the legislation, and its view of the lawfulness or unlawfulness of the conduct of the Respondents. But I have in mind particularly such cases as Bakery and Pastry Drivers vs. Wohl, Carpenters and

Joiners Union of America vs. Ritters Cafe, and other cases we have cited in support of our position. In each of these instances at least the findings have indicated what the economic background of the labor dispute in question was.

In the present instance petitioner called no witnesses; filed no affidavits, through which this material might have been introduced. The sole material relating to it is the affidavit of one of the respondents, but an affidavit which in this particular is uncontroverted, and it is our feeling, in order that findings may be made on all of the matters of fact brought to the attention of the Court, that these proposed findings which we have suggested in Exhibit A attached to our memorandum of objections—I have particularly in mind the Sixth, Eighth, Ninth, Tenth and Eleventh of our proposed findings of fact—I believe that findings should be made with respect to all of those matters, and particularly since the affidavit with respect to them was not controverted in any respect by any counter affidavits or witnesses, by the Petitioner. [6]

I have in mind also, may it please the Court, the fact that the National Labor Relations Act of 1947 has a number of provisions dealing with and passing upon the legality of certain forms of contractual arrangements between employers and employees, such as the provision making unlawful the so-called closed shop; the provision establishing the requirement of a conduct of an election as a condition precedent to entering into an agreement, and the so-called Union shop restriction on welfare funds, restriction on Union dues, and so forth. We think it is important to have findings of fact on these particular situations which will show issues of fact according to the record here:

First of all, that the Respondent Union in this case was not in dispute with the employer on any issue of active bargaining, except wages and holidays, and that none of the demands of the Union in giving rise to this dispute would fall within the type of arrangement proscribed by the Labor Management Relations Act itself.

Second, that in view of the various decisions of the Supreme Court concerned with the matter of economic justification for certain strike and picketing activities on the part of labor organizations, concerned with whether or not the purpose of the picketing activity was in furtherance of the legitimate objective of the employees, I cite cases like Dorchy v. Kansas, for example; cases dealing with the [7] question of whether there is sufficient economic connection between the object of the picketing activities and the primary labor dispute, such as the Ritter's Cafe case, and also the Wohl case in which the Court discusses the subject matter of the dispute.

Therefore, we believe that it is material, and whether or not it would be considered to be material here, at least, in order that a full and proper presentation of the contentions of the Respondents may be made, in the event that an appeal should be taken in this case, that the findings to which I have alluded, concerning the economic background of the dispute, should be entered in this proceeding.

The Court: Do you want to say anything further, Mr. O'Brien?

Mr. O'Brien: If the Court please, Mr. Gilbert has repeated very much of the argument that we had here before, and insofar as there is any merit in it, that would be, I think, covered by the proposed new Finding Seventh which I suggested.

The Court: Of course, it would be just supererogation and unnecessary repetition for the Court to reiterate his views as they are incorporated in the opinion filed. The opinion, which has been denominated in the file as Memorandum of Ruling and Order Granting Injunction under Section 10(1) of the National Labor Relations Act, as amended, [8] contains some of the suggestions Mr. Gilbert has made, and I think that by having the findings recite the filing of that written opinion, any of the matters therein that are considered by a reviewing agency or tribunal to be material and relevant can be examined.

The Supreme Court of the United States, in the Duplex case, which is still the final pronouncement of the court of last resort on what has been characterized as "the secondary boycott," has spoken in no uncertain words, and until that tribunal, or some other applicable superior judicial body indicates otherwise, it is a binding pronouncement upon this Court, and it cannot be removed by argument, except such arguments as would lend support to the pronouncement of the Supreme Court of the United States.

In the decision in Dpulex Printing Press Co. v. Deering 254 U. S. 443, which is cited in the memorandum,

and I am just enlarging upon that citation for the purpose of illustrating what is in the Court's mind, the Supreme Court says:

> "The substance of the matters here complained of is an interference with complainant's interstate trade, intended to have coercive effect upon complainant, and produced by what is commonly known as a 'secondary boycott'; that is, a combination not merely to refrain from dealing with complainant, or to advise or by peaceful means persuade complainant's customers to refrain [9] ('primary boycott'), but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withhold or withdraw patronage from complainant through fear of loss or damage to themselves should they deal with him.
>
> "As we shall see, the recognized distinction between a primary and a secondary boycott is material to be considered upon the question of proper construction of the Clayton Act. But, in determining the right to an injunction under that and the Sherman Act, it is of minor consequence whether either kind of boycott is lawful or unlawful at common law or under the statutes of particular states. Those acts, passed in the exercise of the power of Congress to regulate commerce among the states are of paramount authority, and their prohibitions must be given full effect irrespective of whether the things prohibited are lawful or unlawful at common law or under local statutes."

The Court: In a very erudite and comprehensive work of the American Law Institute, Volume IV on Restatement of the Law of Torts, and particularly in the

section under Topic 7, Injunctive Relief, in labor disputes, we find some helpful suggestions.

Section 813, in black letter type, states:

"Injunctive Relief. [10]

"Subject to the limitations stated in Secs. 814-816, injunctive relief against wrongful concerted action by workers is appropriate under the rules applicable to injunctive relief against torts."

Section 814 of the same work, entitled, "Discretion in Injunctive Relief." In black letter type:

"Injunctive Relief against concerted action of workers under the rule stated in Sec. 813 is not demandable as of right. In determining whether such relief should be granted in a specific case the following factors are important:

(a) the extent of the interests and the number of workers and employers directly or indirectly involved in the case.

(b) the nature of the conduct sought to be enjoined;

(c) the possible effects of the injunction on the labor dispute;

(d) the existence and action of public tribunals empowered to act in the dispute by mediation, conciliation, arbitration, or command;

(e) the problems of enforcement that the issuance of the injunction would create;

(f) the adequacy of the hearings or testi- [11] mony on the basis of which the injunction is sought;

(g) the conduct of the plaintiff in the course of the labor dispute;

(h) the detriment that the plaintiff is likely to suffer by conceding the object of the workers' concerted action."

Sec. 815 of the same work, entitled: Scope of Injunction. In black type:

"In framing an order enjoined concerted action by workers under the rule stated in Sec. 813, the following are important guides:

(a) the order should enjoin only tortious conduct, except as stated in Sec. 816;

(b) the order should be specific as practicable in describing the conduct enjoined and should avoid as far as possible question-begging or omnibus words or provisions;

(c) the order should be written in simple language intelligible to workers without the aid of lawyers;

(d) the order may describe generally or specifically the kind of conduct which it does not restrain; [12]

(e) the order may impose restraints on the plaintiff as conditions of its restraints on the defendants."

Section 816, which is referred to in the first statement of 815, where in subdivision (a) it is stated that

"the order should enjoin only tortious conduct, except as stated in Sec. 816,

entitled Injunction Against Non-Tortious Conduct, says, in black type:

"A decree stated under the rule stated in Sec. 813 may enjoin non-tortious conduct connected with the enjoined tortious conduct, but only if,

(a) it is clear from the past behavior of the defendants that, unless they are enjoined from engaging in the non-tortious conduct, they will continue the tortious and

(b) the court finds that the non-tortious conduct should be enjoined under the rule stated in Sec. 814."

It seems to me that the court has appropriately covered, in its opinion filed in this case, the facts that are properly to be included in injunctive relief, and if the opinion becomes a part of the findings of fact by reference, I think any reviewing court will have before it precisely [13] what the views of this court were.

There are certain portions of the opinion which I think should be emphasized, with respect to the matters just discussed. On page 4 of the opinion, commencing with line 26, it is stated:

> "In support of the motion the respondents filed simultaneously therewith an affidavit of Mr. Turner, recounting various steps that have occurred in a labor dispute relating to wage rates and holiday pay between the Union as a collective bargaining agency of the production employees of the Los Angeles plant of Sealright and such corporation which he avers culminated in a strike of 67 of the approximately 70 production workers in such local plant of Sealright on November 3, 1947.
>
> "The only variance between the factual situation ascertained by the Regional Director of the Board and specified in his verified petition and that attested in the affidavit of Mr. Turner in his statement that the picketing at each of the described locales was 'peaceful.' "

Then the court proceeds to state that it has followed the rule of the Supreme Court in Hecht Co. v. Bowles, and has considered the evidence and weighed it, and, accordingly, has made its findings in view of the conclusions. [14]

It seems to be that Mr. Gilbert's suggestion as to the date of the strike is covered by that statement in the opinion, and we must assume that any reviewing court will examine the record, and if the record is examined the facts should be made clear as to what the views of the lower court were.

Is there any objection, Mr. Gilbert, to the incorporation of the oral suggestions that have been made by Mr. O'Brien?

Mr. Gilbert: May it please the Court, I do not believe that this last suggestion by Mr. O'Brien cures the defect in the original proposed order, that we believe exists.

We have suggested some of the problems, and while I believe that portions of the statements which the Court has read are applicable in cases for injunctive relief in disputes between picketing parties, I would certainly subscribe to the criteria there with respect to the scope of injunctive relief, with respect to specificity, and so forth. Some of the questions we have in mind, and which perhaps may be covered by one of the sections of the statement which the Court read, namely, that acts not sought to be enjoined are sometimes referred to in that fashion in order that it may be made perfectly plain, not only what is prohibited in the injunction, but what is permitted under its terms. And in many of these instances, in recent years, where a [15] labor situation has been involved, the order has excepted such conduct,

namely, picketing, which is not sought to be reached by the scope of the order.

I call the Court's attention to point IV of our memorandum of objections, which outlines some of the problems. It cannot be ascertained from this proposal, whether the continued existence of a picket line at or near the premises of Sealright Pacific, Ltd., would be restrained. This does clarify a portion of it with respect to the matter of dissemination of information by means of ordinary picketing, that is, pamphlets, radio or advertising and publications of general interest, and so on, to some extent, by including the terms "orders, force, threats, or promises of benefits." We have on previous occasions pointed out to the Court our confusion when these terms are put in the disjunctive, rather than the conjunctive, and we are by no means clear as to what constitutes a promise of benefits.

The language which we employ in stating this problem is on page 7 of our memorandum, inquiring whether it was intended by the original proposed order to prohibit respondents from publicizing the facts of the labor dispute in issue by expressing any views, arguments, or opinion, or the dissemination of the same in written, printed, graphic or visual form. Of course, we have reference to Section 8 (c) of the amended National Labor Relations Act, [16] declaring that such publication of views, argument or opinion should not constitute or be evidence of any unfair labor practice.

We have diligently and as carefully as possible, searched for guidance in that matter in the opinion on file, and we have attempted to read and reread that section in the light of the decision made herein; but we

are not exactly clear as to whether or not, for example, it is intended that the order should reach the matter of the picketing, irrespective of local, or pamphleteering, or other methods of the dissemination of the facts of the dispute coincident with peaceful picketing. Or whether or not it is proposed by this order to close the other media to the respondents, in addition to restraining picketing activities. And I do not believe that this proposal shows us the way out of that dilemma.

If I am permitted, I would like to make one additional comment with respect to the other matter. We have not conceded throughout this proceeding the position taken by the Petitioner, that this Court is limited in its discretion to the extent that the usual considerations which may be considered and passed upon by a court of equity in issuing, or declining to issue, injunctive relief are ruled out by Section 10 (1) of the amended Act.

We have felt, and we feel, that if that were the case then [17] that section of the Act would be subject to a further and additional objection, that it destroys the separation of powers under our Constitution, with respect to executive and judicial branches of Government, and in balancing the equity upon a situation of this kind we believe that findings with respect to economic justification, if there be any, for the concerted labor activity of these striking employees, is warranted, and that the findings should show whether or not the specific economic factors giving rise to the dispute were considered by the Court.

With respect to the portion of the opinion referred to, which would be incorporated by reference, many of these matters are contained therein that I have referred to in the proposed findings, but the specific issue

involved, that is to say, the contention, at least—I think the affidavit of Mr. Turner will support the contention of the respondent here—that this activity was justified by the desire of the respondent Union to maintain, and to picket the prevailing wage and holiday standards in this community, that the findings should show whether or not that was considered, and I do not believe that that portion of the opinion deals with the details of the relationship between the wages paid in this plant, and the wages paid in the community as the prevailing rate, and other economic issues involved. [18]

I am not arguing the merits, but I mention the case to show the point we are trying to get at. That is the case of Dorchy v. Kansas, and one of the situations the Court took into account was the objective of the activity; and we have attempted to point out,—and I won't attempt here to go into all of the details which are set forth in written form in the memorandum, unless the Court desires me to—but many of the matters which we have objected to were conceded by the Petitioner in its memorandum of points and authorities, wherein it restated the facts or restated the substance, in the same terms that we contend for at the present time. And I do believe that, in this particular situation, if possible, the exact nature of the dispute should be determined on the basis of the material presented.

There is one other matter that I would like to call the Court's attention to at this time. The statement in the opinion that the only variance between the factual situation is the question as to whether or not the activities were peaceful, might be amplified at least by consideration of subparagraph (c) of the Sixth proposed finding, appearing on page 3, at line 7 through 9.

In that connection I would like to call the attention of the Court to the matter set forth on page 3 of our memorandum of objections, being point 2, commencing on line 16, and the paragraphs following. First of all, I think [19] it is clear from the affidavit, and from the subsequent memoranda filed by the Petitioner, that a correction should be made with respect to the office held by the Respondent Turner in the Respondent Union.

The Court: You will observe in the opinion that the Court used the term "officers."

Mr. Gilbert: Yes, and I believe the Petitioner would concede that fact, that Mr. Turner is the secretary-treasurer of that organization, rather than the vice president, and the findings should so show.

Next I have particularly in mind that portion of the Sixth proposed finding, Sixth (c) that Mr. Turner allegedly advised L. A. Seattle that if it continued to handle Sealright's product, L. A. Seattle would be picketed by Local 388.

At the top of page 4 of our memorandum of objections we call the Court's attention to the fact that this allegation is specifically refuted by Mr. Turner's affidavit in the following words:

> "At no time did affiant advise Los Angeles-Seattle Motor Express, Inc. that Local 388 would picket all or any of the firm's operations as such, if it continued to handle Sealright's products, nor did affiant in any way indicate or imply that Local 388 would picket any other products being handled or transported by said [20] firm for companies other than Sealright Pacific, Ltd., under any circumstances whatsoever."

Then following the filing of that affidavit, the petitioner, in his memorandum of points and authorities, stated the fact in these words:

> "On about November 13, 1947 Respondent Turner, Secretary-Treasurer of Local 388, advised the Los Angeles-Seattle Motor Express, Inc. (hereinafter called L. A. Seattle), a common carrier which has transported Sealright's products, that if L. A. Seattle continued to handle Sealright's products, Local 388 would picket Sealright products handled by L. A. Seattle."

The significance of this particular variation, I think is apparent. I would understand the view of this Court to be that a material boycott following the products of the struck plant, and picketing those boycotts, for the purpose of persuading employees of other employers, as a matter of individual conviction and view, to decline to handle or transport those products, that this situation I have just described, is a material boycott, and constitutes a secondary boycott within the meaning of the Duplex case, and as I understand the Court's views, the Duplex case, decided many years ago, is still relevant authority on that subject.

But I think that the Court would be willing to recognize the situation between a material boycott, and a [21] situation in which a Labor Union might advise a business firm, without reference to the presence of any goods or products of the struck firm at or near the premises; that is, if it would try to service, or do business with, or deal with the struck firm, saying, "We will attempt to induce your employees to go on a strike. We will attempt to induce the public not to do business with you. We will

place your firm on the "Do not patronize" list of the Central Labor Body.

I am not contending or arguing that this Court would make any distinction between the first situation I have described, and the second, as a matter of law, but I am contending that they are different situations, and all of the treatises and all of the articles on the subject of the law regarding boycott by members of striking labor organizations,—all of them recognize these are two different factual situations; and the precise issue which we believe was presented to this Court, is whether or not a material boycott,—the following of the products, and narrow conduct of picketing that product as such, without interference with any of the other operations of the business establishment handling those products,—whether that constitutes an unlawful secondary boycott which may be prohibited under 8 (b) (4) (A) and 10 (1) of the Act.

And it is for that reason we expressly request that [22] our proposed finding numbered Thirteenth, on page 3 of our Exhibit A of our memorandum, lines 17 through 23, be adopted as a finding of fact rather than the ambiguous statement in subparagraph (c) of the Petitioner's proposed findings of fact.

Mr. O'Brien: If it please the Court, I don't want to reargue this case at all. There are two things that I do want here. No. 1. I do want the Respondents to know specifically what they are prohibited from doing by the Court's order. I have endeavored to handle that matter as specifically as I could.

The second matter I hardly regard as material. That is, the precise definition of the findings of fact. The Court's memorandum opinion includes findings of fact

and conclusions of law, and the Federal Rules of Civil Procedure as they will certainly be amended, if they have not already been amended, will certainly include a provision that when the Court hands down an opinion that findings of fact and conclusions of law are incorporated.

I think that everything that was raised by Mr. Gilbert in his argument was fully covered in the Court's opinion, and it is my sincere belief that the retyped final page of the proposed order will sufficiently advise all of the Respondents of what action they are prohibited by the Court from taking.

The Court: Have you now before the Court the specific [23] and concrete suggestions that you make in that regard?

Mr. O'Brien: Yes, I have had the final page retyped, and the proposed order, as originally drawn reads, on line 16, page 5:

> "Engage in, or inducing or encouraging, the employees of any employer"

It appears in exactly the same words as on the same line in the proposed correction. In the proposed correction, which the Court has before it are the words added on line 17:

> "by picketing, orders, force, threats, or promises of benefit, or by permitting any such to remain in effect, or by any other like or related acts or conduct"

That concludes the proposed insertion ending on page 19. From there on the words

> "engage in, a strike or a concerted refusal in the course of their employment"

are the same as line 17 in the original proposed order. From there on the order differs in no particular.

The Court: Do you want to say anything further, Mr. Gilbert?

Mr. Gilbert: If I might make a brief statement, and then I believe I will have presented to this Court, so far as I know at this time, all of the matters we are particularly [24] concerned about, and which we believe the latest proposals of the Petitioner do not meet.

As I read the amended proposals of the Petitioner with respect to the order granting injunctive relief, it is specifically not clear on the question I have raised, as to whether or not it is intended to prohibit picketing activities at or in the vicinity of the Los Angeles plant of Sealright Pacific Ltd. The charging part, in the case of where the National Labor Relations Board, states that the Respondent would be restrained and enjoined from engaging in

> "a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is forcing or requiring an employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the product of, or to cease doing business with, Sealright Pacific, Ltd."

I am not clear from that language which I have just read as to whether it is intended to enjoin the Sealright

employees from engaging in a strike or concerted refusal to work at the plant of Sealright.

It is also not clear, reading that portion of the order [25] which would enjoin Respondents from inducing or encouraging the employees of any employer by picketing, to engage in a strike, and so forth,—whether or not that is intended to reach picketing at the Sealright plant.

For those reasons, at least, I believe it is certainly unclear.

With respect to the findings of fact, I want to make just one more point, in order that I might not have omitted calling it to the attention of the Court specifically. That is, with respect to the proposed findings contained in subparagraph (f) of the Sixth proposed finding of fact, relating to the loading of certain rolls of paper.

There has been a contention made here, and the facts have been adduced here by the Respondents relating to the ownership of that paper, and that matter is set out more fully in page 5 of our memorandum, lines 9 through 17, and the proposed finding is contained in our Exhibit A relating thereto, namely, that the paper was consigned from the New York plant to the Los Angeles plant of Sealright, for use in continued manufacturing operations. I certainly want to call that to the attention of the Court, and particularly our Sixteenth proposed finding of fact covering that matter.

And finally, we believe that the law itself is clear on the point. The order, as read, would run to all agents,

service, employees, and attorneys of the Respondent, whether [26] or not they had actual notice of the order itself, and we have, therefore, called this matter to the attention of the Court, both with respect to the Eighth conclusion of law and with respect to the order itself, suggesting that the language should be modified, or clarified, by the addition of the words: "who receive actual notice of the order by personal service or otherwise."

The Court: The Act has a provision which I think is adequate and sufficient on that point. In the final part of Section 10 (1) of the Act, as amended there is a proviso clause, which reads as follows:

> "Provided further, That for the purpose of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which *it* duly authorized officers or agents"

I suppose that means "its," but the printed copy has no "*t*." I think it should read:

> "in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where [27] such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D)."

I want to say, not in amplification, but just in reiteration of what the Court said in its opinion, that which seems to have been lost sight of by counsel, quoting from page 6 of the ruling, commencing with line 5:

> "Before turning to the very delicate constitutional issue that is involved under the established concrete factual situation before the Court, attention should be given to the significance and broad change in legislative policy that is definitely declared and clearly expressed by Congress relative to the use of injunctive processes available in the District Court to ameliorate the public interests in the federal area of labor disputes. Not only is it stated in Subsection (h) of Section 10 of the Act that the equitable jurisdiction of federal courts is no longer to be circumscribed by limitations specified in the Act approved March 23, 1932, 29 U.S.C.A., Section 101, et seq. (Norris-LaGuardia Act), but Subsection (1) of Section 10 further amplifies the National policy of utilizing appropriate judicial injunctive methods in the specific activities that are made unlawful in Section 8 (b), (4), (A) of the Act 'notwithstanding any other [28] provision of law.'"

That is a clear line of demarcation, and when consideration is given to the other provisions of the amendments to the National Labor Relations Act, incorporated in the Labor-Management Act of 1947, as to the jurisdiction of the Circuit Court of Appeals, and of the administrative agencies, it is clear to this Court's mind, and it is obvious to the Court's mind, what Congress meant when it conferred the power of injunctive relief

upon the District Courts. So some of the able argument that has been made by counsel, I think, loses sight of that aspect of this regulation.

I am satisfied that the process should issue as it is requested. It is clear, explicit, and precise.

I want to say also I am hopeful that this suggestion that counsel make in their memorandum, that there is a denial on the part of the workers that they will not observe the injunction, is going to be respected; and I also hope that there will be an appeal in this case. I think it would have a tendency to clarify the situation.

If those two aspects of the case are pursued sincerely, I am confident that we will have accomplished something.

If you will present the modified finding, Mr. O'Brien, with the incorporation in it of the ruling of the Court, at the appropriate place, stating that the Court has made its ruling conform to the memorandum which is on file, [29] referring to it, and that all of it includes the enlargement I have spoken about, I think it will be sufficient. Do you want him to serve that on you, Mr. Gilbert, before it is presented to the Court for signature?

Mr. O'Brien: May it please the Court, the enlargement has already been typed, and was submitted to the Court as a substitute for the final page of the original suggested order. If it could be substituted and signed now, I would be happy to serve it upon Mr. Gilbert.

The Court: With the exception of the incorporation of the statement about the opinion of the Court. That is not included.

Mr. O'Brien: I shall do that.

The Court: Do you want it served on you, Mr. Gilbert?

Mr. Gilbert: I think it would be advisable.

[Endorsed]: Filed Apr. 7, 1948. Edmund L. Smith, Clerk. [30]

[Endorsed]: No. 11894. United States Circuit Court of Appeals for the Ninth Circuit. Printing Specialties and Paper Converters Union, Local 388, A. F. L., and Walter J. Turner, Appellants, vs. Howard F. LeBaron, Regional Director of the 21st Region of the National Labor Relations Board, on Behalf of the National Labor Relations Board, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed April 9, 1948.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the Circuit Court of Appeals of the United States
in and for the Ninth Circuit

No. 11894

PRINTING SPECIALTIES, LOCAL #388, etc.,

Appellants,

vs.

HOWARD F. LeBARON, etc.,

Appellees.

APPELLANTS' STATEMENT OF POINTS

The appellants state that the points upon which they intend to rely in the appeal in this action are as follows:

1. The District Court erred in denying the motion of appellants and respondents to dismiss the petition for an injunction under Section 10(1) of the National Labor Relations Act, as amended.

2. The District Court lacked jurisdiction over the instant proceeding, in that the entire matter was heard and decided under color of the purported authority of Sections 8(b)(4)(A) and 10(1) of the National Labor Relations Act as amended, which portions of said enactment are unconstitutional and void in that they contravene Amendments I, V, and XIII of the Constitution of the United States.

3. The Order for Injunctive Relief, from which this appeal is taken, restrains lawful acts of the appellants and respondents and in substance and in form, is contrary to

the Constitution of the United States, Amendments I, V, and XIII.

4. The District Court erred by failing to give any force or effect to Section 8(c) of the National Labor Relations Act, as amended, in deciding the merits of the instant petition.

5. Section 10(1) of the National Labor Relations Act as amended, and the Order for Injunctive Relief issued herein, are violative of Article III of the Constitution of the United States, in that non-judicial powers may not be conferred by Congress upon the inferior Courts nor validly exercised by said Courts.

6. The Findings of Fact, upon which the Order for Injunctive Relief is based, are contrary to and unsupported by the evidence, and omit material, uncontroverted facts established by the record herein.

7. The Findings of Fact, Conclusions of Law and Order herein are subject to the objections raised by appellant and respondents prior to the Settlement and Entry thereof, which objections erroneously were disregarded by the District Court.

Dated: April 16, 1948.

ROBERT W. GILBERT
ALLAN L. SAPIRO
CLARENCE E. TODD
By Allan L. Sapiro
Attorneys for Appellants

[Endorsed]: Filed Apr. 21, 1948. Paul P. O'Brien, Clerk.